

RECORDATION NO. 9620... Filed & Recorded

AUG 3 1978 - 6 25 AM

OBER, GRIMES & SHRIVER
ATTORNEYS AT LAW

1600 MARYLAND NATIONAL BANK BUILDING
BALTIMORE, MARYLAND 21202

TELEPHONE (301) 685-1120
CABLE ADDRESS "RITNEY"
TELEX 8-7774

WASHINGTON, D. C. OFFICE
1725 K STREET, N. W.
WASHINGTON, D. C. 20006
TELEPHONE (202) 659-4530
CABLE ADDRESS "RITNEY"
TELEX 8-7774

INTERSTATE COMMERCE COMMISSION

LEONARD C. HOMER
JOHN A. WOLF
THOMAS W. COONS
JOHN C. BALDWIN
K. HOUSTON MATNEY
WARREN B. DALY, JR.
GEOFFREY S. TOBIAS
JEFFREY A. HAMMOND
MICHAEL H. DAVIS
M. HAMILTON WHITMAN, JR.
MICHAEL L. QUINN
NANCY GREGOR FRAME
ROBERT B. KERSHAW
PAMELA J. WHITE

* ADMITTED IN DISTRICT OF
COLUMBIA ONLY
* ADMITTED IN MARYLAND AND
DISTRICT OF COLUMBIA

COUNSEL
FRANK B. OBER
ROBERT W. WILLIAMS
J. RIEMAN MCINTOSH

WILLIAM A. GRIMES (1904-1977)
J. NICHOLAS SHRIVER, JR. (1913-1977)

J. PAUL BRIGHT, JR.
RANDALL C. COLEMAN
THOMAS D. WASHBURN
MERLIN H. STARING
LEWIS C. STRUDWICK
JERVIS SPENCER FINNEY
MANFRED W. LECKSZAS
RICHARD E. HULL
THOMAS B. EASTMAN
GEORGE T. TYLER
WILLIAM L. BALFOUR
WILLIAM C. TRIMBLE
WILLIAM A. SNYDER, JR.
RICHARD R. JACKSON, JR.
FRANK H. WELLER, JR.
DONALD C. GREENMAN
JOHN T. WARD
KIERON F. QUINN
JERALD J. OPPEL
JOHN H. WEST, III
ROBERT V. BARTON, JR.
ALAN J. MOGOL

RECORDATION NO. 9620-A Filed & Recorded

AUG 3 1978 - 6 25 AM

INTERSTATE COMMERCE COMMISSION

August 2, 1978

RECORDATION NO. 9620-B Filed & Recorded

AUG 3 1978 - 6 25 AM

INTERSTATE COMMERCE COMMISSION

Secretary of the Interstate
Commerce Commission
Twelfth and Constitution, N.W.
Washington, D. C. 20423

Attention: Mildred Lee
Room 1227

Dear Sir:

Enclosed herewith for filing in your office,
pursuant to Section 20c of the Interstate Commerce Act,
are five (5) executed counterparts of each of the
following:

1. Purchase Order Assignment dated as of
July 18, 1978, by Consolidated Rail Corporation,
Assignor, to The Fidelity Bank, as Trustee, Assignee;
and Consent and Agreement dated as of July 18, 1978, by
Portec, Inc.; providing for the assignment of certain
rights to purchase two hundred twenty-seven (227) tri-
level enclosed auto racks for use in connection with
Interstate Commerce;

2. Equipment Trust Agreement dated as of
July 18, 1978, between Heleasco Two, Inc., as Trustor,
and The Fidelity Bank, as Trustee, providing for the
purchase and lease of two hundred twenty-seven (227)
tri-level enclosed auto racks for use in connection with
Interstate Commerce; and

3. Lease of Railroad Equipment dated as of
July 18, 1978, between The Fidelity Bank, as Trustee,
Lessor, and Consolidated Rail Corporation, Lessee, pro-
viding for the lease of two hundred twenty-seven (227)

8-2154030

No. AUG 3 1978
Date.....
Fee \$/52

ICC Washington, D. C.

RECEIVED

RECEIVED
AUG 3 1978
FEE OPERATION BR.

Counterparts - Joseph H. Thompson

Secretary of the Interstate
Commerce Commission
August 2, 1978
Page 2

tri-level enclosed auto racks for use in connection
with Interstate Commerce.

Also enclosed is a check in the amount of \$150.00
for the recordation fees.

The names and addresses of the parties to the
foregoing documents are as follows:

Trustee and The Fidelity Bank
Lessor: Broad and Walnut Streets
 Philadelphia, Pennsylvania 19109

Attention: Corporate Trust
 Department

Trustor: Heleasco Two, Inc.
 1200 Philadelphia Pike
 Claymont, Delaware 19073

Attention: President

Lessee: Consolidated Rail Corporation
 1310 Six Penn Center Plaza
 Philadelphia, Pennsylvania 19104

Attention: Vice President
 and Treasurer

Builder: Portec, Inc.
 300 Windsor Drive
 Oak Brook, Illinois 60521

The equipment covered by the Agreements consists
of two hundred twenty-seven (227) tri-level enclosed auto
racks, bearing Consolidated Rail Corporation's Identifying
Numbers CR4501 through 4727 inclusive. Such equipment also
bears the following legend:

"Auto Rack Owned By A Bank Or Trust
Company Under A Security Agreement Filed
Under Section 20c Of The Interstate Commerce
Act And Article 9 Of The Pennsylvania

Secretary of the Interstate
Commerce Commission
August 2, 1978
Page 3

Uniform Commercial Code and Leased Under
A Lease Deposited Under Section 86 Of The
Railway Act Of Canada."

on both sides of each auto rack.

Kindly return to the bearer three (3) counter-
parts of each of the Agreements.

Sincerely yours,


Alan J. Mogol

AJM/bhl

Enclosures

RECORDATION NO. 9520-A Filed & Recorded

AUG 3 1978 9 22 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT TRUST AGREEMENT

Dated as of July 18, 1978

Between

HELEASCO TWO, INC.

Trustor

and

THE FIDELITY BANK

Trustee

CONSOLIDATED RAIL CORPORATION

**227 Tri-level Enclosed
Auto Racks**

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on August ____, 1978, at ____ A.M.,
Recordation No. _____.

INDEX TO EQUIPMENT TRUST AGREEMENT

	PAGE
ARTICLE I.	
DEFINITIONS	
SECTION 1.01. Special Definitions	1
SECTION 1.02. Reference to Lease	4
ARTICLE II.	
AUTHORITY TO EXECUTE; DECLARATION OF TRUST	
SECTION 2.01. Authorization	4
SECTION 2.02. Declaration of Trust	4
ARTICLE III.	
THE CERTIFICATES	
SECTION 3.01. Form of Equipment Trust Certificates	5
SECTION 3.02. Terms of Equipment Trust Certificates	11
SECTION 3.03. Payments from Trust Estate Only	11
SECTION 3.04. Method of Payment	12
SECTION 3.05. Application of Payments to Principal and Interest	12
SECTION 3.06. Termination of Interest in Trust Estate	13
SECTION 3.07. Transfer of Equipment Trust Certificates	13
SECTION 3.08. Mutilated, Destroyed, Lost or Stolen Equip- ment Trust Certificates	15
SECTION 3.09. Payment of Expenses on Transfer	15
ARTICLE IV.	
ACCEPTANCE AND DELIVERY OF EQUIPMENT; ISSUANCE OF EQUIPMENT TRUST CERTIFICATES	
SECTION 4.01. Authorization re: Delivery Dates	16
SECTION 4.02. Conditions re: Delivery Dates	16
SECTION 4.03. Authorization re: Closing Dates	16
SECTION 4.04. Conditions re: Closing Dates	17
SECTION 4.05. Authorization re: Final Closing Date	18
SECTION 4.06. Conditions re: Final Closing Date	18

ARTICLE V.

RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST ESTATE

SECTION	5.01.	Rent	19
SECTION	5.02.	Payments for Obsolete or Lost Equipment ..	19
SECTION	5.03.	Payments After Default	20
SECTION	5.04.	Payments for Loss of Investment Tax Credit or Depreciation	21
SECTION	5.05.	Application of Lease Provisions	21
SECTION	5.06.	Other Payments	21

ARTICLE VI.

DUTIES OF THE TRUSTEE

SECTION	6.01.	Notice of Default	21
SECTION	6.02.	Action Upon Instructions	22
SECTION	6.03.	Indemnification	23
SECTION	6.04.	No Action and No Duties Except as Specified in Equipment Trust Agreement or Lease or Instructions	23
SECTION	6.05.	Filing of Tax Returns	24

ARTICLE VII.

THE TRUSTEE

SECTION	7.01.	Acceptance of Trusts and Duties	24
SECTION	7.02.	Absence of Duties	24
SECTION	7.03.	No Representations or Warranties as to Units	25
SECTION	7.04.	No Segregation of Monies; Deposit; No In- terest	25
SECTION	7.05.	Reliance; Agents; Advice of Counsel	25
SECTION	7.06.	No Acting in Individual Capacity	26
SECTION	7.07.	No Compensation from Participants or Trust Estate	26
SECTION	7.08.	Exculpatory Provisions, Immunities and In- demnities in Favor of Trustee	26
SECTION	7.09.	Fees and Expenses of Trustee	26
SECTION	7.10.	Knowledge Attributable to Trustee	27

ARTICLE VIII.

INDEMNIFICATION BY TRUSTOR

SECTION 8.01.	Indemnification of Trustee	27
SECTION 8.02.	Indemnification of Holders	28

ARTICLE IX.

TRANSFER OF TRUSTOR'S INTEREST

SECTION 9.01.	Conditions	28
SECTION 9.02.	Notice	29
SECTION 9.03.	Option to Buy Equipment Trust Certificates .	30
SECTION 9.04.	Rental Payments by Trustor	30

ARTICLE X.

SUCCESSOR TRUSTEE

SECTION 10.01.	Resignation and Removal of Trustee; Ap- pointment of Successor Trustee	31
SECTION 10.02.	Qualifications of Successor Trustee	32
SECTION 10.03.	Merger, Conversion or Consolidation of Trus- tee	32

ARTICLE XI.

SUPPLEMENTS, FURTHER ASSURANCES AND AMENDMENTS TO THIS
TRUST AGREEMENT AND OTHER DOCUMENTS

SECTION 11.01.	Instructions of Majority; Limitations	33
SECTION 11.02.	Trustee Protected	34
SECTION 11.03.	Request of Substance, Not Form	34
SECTION 11.04.	Documents Mailed to Holders	34

ARTICLE XII.

MISCELLANEOUS

SECTION 12.01.	Termination of Equipment Trust Agreement .	34
SECTION 12.02.	No Legal Title to Trust Estate	35
SECTION 12.03.	Sale of Equipment by Trustee is Binding	35

SECTION 12.04.	Equipment Trust Agreement and Certificates for Benefit of Trustee and Holders Only	35
SECTION 12.05.	Notices	35
SECTION 12.06.	Severability	36
SECTION 12.07.	Written Changes Only	36
SECTION 12.08.	Separate Counterparts	36
SECTION 12.09.	Successors and Assigns	36
SECTION 12.10.	Headings	36
SECTION 12.11.	Governing Law	36
EXHIBIT I	— Purchase Order Assignment	
EXHIBIT II	— Lease of Railroad Equipment	
EXHIBIT III	— Finance Agreement	

EQUIPMENT TRUST AGREEMENT

TRUST AGREEMENT dated as of July 18, 1978, between HE-LEASCO TWO, INC., a Delaware corporation ("Trustor"), and THE FIDELITY BANK, a Pennsylvania banking corporation ("Trustee").

ARTICLE I

DEFINITIONS

SECTION 1.01. For all purposes of this Trust Agreement the following terms shall have the following meanings:

(a) *Aggregate Loan Participants' Commitment* shall mean, with respect to each Item of Equipment an amount equal to 74.389% of the Purchase Price of such Item of Equipment, but in no event in excess of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) in the aggregate as to all Items of Equipment.

(b) *Certificates* shall mean the Equipment Trust Certificates and the Interim Equipment Trust Certificates.

(c) *Closing Date* shall mean the twenty-fourth (24th) day of each month beginning August 24, 1978, until the Final Closing Date.

(d) *Equipment Trust Certificate* shall mean the Equipment Trust Certificates substantially in the form therefor set forth in Section 3.01(b) issued by the Trustee to the Loan Participants pursuant to Article IV, and shall include any certificate issued in exchange therefor or replacement thereof pursuant to Sections 3.07 or 3.08.

(e) *Final Closing Date* shall mean the Closing Date specified in the notice given by the Lessee pursuant to Section 2 of the Lease (but in no event later than November 1, 1978).

(f) *Finance Agreement* shall mean the Finance Agreement to be entered into by and between the Trustee, the Participants and the Lessee in substantially the form of Exhibit III attached hereto, as the same may from time to time be supplemented or

amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(g) *Holder* shall be any person in whose name a Certificate is registered in the register maintained pursuant to Section 3.07(a) hereof.

(h) *Interim Equipment Trust Certificate* shall mean the Interim Equipment Trust Certificates substantially in the form therefor set forth in Section 3.01(a), issued by the Trustee to the Loan Participants pursuant to Article IV, and shall include any certificate issued in exchange therefor or in replacement thereof pursuant to Sections 3.07 or 3.08; sometimes hereinafter referred to as the "Interim Certificate" or "Interim Certificates."

(i) *Lease* shall mean the Lease of Railroad Equipment to be dated as of the date hereof and to be entered into by and between the Trustee and Consolidated Rail Corporation ("Lessee") in substantially the form of Exhibit II attached hereto, as said Lease may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Trust Agreement.

(j) *Loan Participants* shall mean and include Provident National Bank and The Union National Bank of Pittsburgh and their successors and assigns.

(k) *Loan Participant's Allocated Commitment* shall mean:

(i) as to Provident National Bank, with respect to each Item of Equipment an amount equal to 49.593% of the Purchase Price of such Item of Equipment, but in no event in excess of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) in the aggregate as to all Items of Equipment; and

(ii) as to The Union National Bank of Pittsburgh, with respect to each Item of Equipment an amount equal to 24.796% of the Purchase Price of such Item of Equipment, but in no event in excess of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) in the aggregate as to all Items of Equipment.

(l) *Majority in Interest of Participants* as of a particular date of determination shall mean (i) the holders of more than fifty (50) percent in aggregate unpaid principal amount of all Certificates, if any, outstanding as of such date or, if no Certificates have been issued but the Finance Agreement has then been executed by the Loan Participants, the Loan Participants and (ii) the Trustor, provided, however, that during any period during which an Event of Default shall have occurred and be continuing after the issuance of any Certificate, or during any period commencing three (3) days after any payment of principal of or interest on any Certificate shall not have been paid when due for any reason and continuing thereafter until payment in full of any principal of and interest on any Certificates which shall be overdue, Majority in Interest of Participants shall mean the holders of more than fifty (50) percent in aggregate unpaid principal amount of all Certificates outstanding as of the date of determination.

(m) *Participants* shall include the Loan Participants and the Trustor.

(n) *Payment Date* shall mean (i) if no Certificates have then been issued, the fifth (5th) day of the month in which any installment of rent under Section 3 of the Lease is due, or (ii) if Certificates have then been issued, any date specified for the payment of installments of principal and/or interest on the Certificates.

(o) *Purchase Price* shall mean, with respect to each Item of Equipment, that amount required to be paid pursuant to the terms of the Purchase Order; as specified on the Certificate of Cost delivered by the Lessee pursuant to Section 4 of the Finance Agreement.

(p) *Trust Estate* shall mean all estate, right, title and interest of the Trustee in and to the Equipment, the Lease, the Purchase Order and the Assignment, including, but without limitation, (i) all amounts of rent, insurance proceeds and requisition, indemnity or other payments of any kind for or with respect to any Item of Equipment and (ii) any and all payments or proceeds received by the Trustee after the termination of the Lease with

respect to any Item of Equipment as the result of the sale, lease or other disposition thereof.

(q) *Trustor's Commitment* shall mean, with respect to each Item of Equipment, an amount equal to 25.611% of the Purchase Price of such Item of Equipment, but in no event in excess of Two Million One Hundred Sixty Thousand Dollars (\$2,160,000.00) in the aggregate as to all Items of Equipment.

SECTION 1.02. For all purposes of this Trust Agreement the following terms shall have the meanings defined in the Lease and/or the Finance Agreement: Assignment, Builder, Casualty Occurrence, Certificate of Cost, Certificate of Delivery, Delivery Date, Equipment, Event of Default, Item of Equipment, Lessee, Purchase Order and Casualty Value.

ARTICLE II

AUTHORITY TO EXECUTE; DECLARATION OF TRUST

SECTION 2.01. The Trustor hereby authorizes and directs the Trustee (a) to execute and deliver the Finance Agreement, the Assignment and the Lease, (b) to exercise the rights and perform the duties of the Assignee under the Assignment and of the Lessor under the Lease as set forth in this Trust Agreement, and (c) to authorize a representative of the Trustee (who shall be one or more agents or employees of Lessee identified to the Trustee by Lessee) to accept delivery of each Item of Equipment on the applicable Delivery Date (subject in all events to the provisions of paragraphs (a) through (d) of Section 2 of the Lease), upon receipt of each (x) Certificate of Delivery executed by the Lessee pursuant to Section 2 of the Lease, and (y) Builder's Delivery Certificate.

SECTION 2.02. The Trustee hereby declares that it will hold the Trust Estate upon the trusts hereinafter set forth, subject to, and in accordance with, the terms of Article V hereof, first, for the ratable use and benefit of the holders of the Certificates and, second, for the ratable use and benefit of the Trustor, all as more particularly set forth in said Article V. By its execution of this Trust Agreement, the Trustee hereby grants, for the benefit of the holders of the Certifi-

cates, a security interest in the Trust Estate (except indemnities payable to the Trustee under the Lease) to secure the timely payment of the indebtedness evidenced by the Certificates and the performance and observance by the Trustee of all of the Agreements, covenants and provisions herein and in the Certificates contained, subject to the terms and conditions hereof.

ARTICLE III

THE CERTIFICATES

SECTION 3.01. (a) The Interim Equipment Trust Certificates shall be substantially in the form set forth below:

(FORM OF INTERIM EQUIPMENT TRUST CERTIFICATE)

THE FIDELITY BANK

Trustee Under Equipment Trust Agreement

Dated as of _____, 1978

(CONSOLIDATED RAIL CORPORATION)

227 Tri-level Enclosed
Auto Racks

9¾% Interim Equipment Trust Certificate

\$ _____, 1978

THE FIDELITY BANK, as trustee ("Trustee") under the Equipment Trust Agreement dated as of _____, 1978 ("Trust Agreement"; the defined terms therein not otherwise defined herein being herein used with the same meanings), between HELEASCO TWO, INC. ("Trustor") and the Trustee, hereby promises to pay to _____, or registered assigns, the principal sum of \$ _____, together with interest on the amount of said principal sum remaining unpaid from time to time from the date of this Interim Equipment Trust Certificate until maturity at the rate of nine and three-quarters (9¾) percent per annum (computed on the basis of a 360-day year of twelve 30-day months),

payable in one payment of principal and interest in an amount sufficient to discharge the accrued interest on, and principal of, this Interim Equipment Trust Certificate on the Final Closing Date.

This Interim Equipment Trust Certificate, to the extent permitted by applicable law, shall bear interest at the rate of twelve and one-half (12½) percent per annum (computed as aforesaid) on any part of the principal or interest hereof not paid at maturity for any period during which the same shall be overdue.

All payments of principal and interest hereunder and under the Trust Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V of the Trust Agreement; and each holder hereof, by its acceptance of this Interim Equipment Trust Certificate, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that neither the Trustor nor the Trustee is or shall be personally liable to the holder hereof for any amounts payable under this Interim Equipment Trust Certificate or the Trust Agreement.

Principal and interest shall be payable at the Corporate Trust Department of the Trustee at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, or at the office of any successor Trustee, in lawful money of the United States of America except as provided in Section 3.04 of the Trust Agreement.

Each holder hereof by its acceptance of this Interim Equipment Trust Certificate agrees that each payment received by it hereunder shall be applied *first*, to the payment of accrued interest on this Interim Equipment Trust Certificate (as well as any interest on overdue principal or interest) to the date of such payment, and *second*, the balance, if any, remaining thereafter to the payment of the principal amount of this Interim Equipment Trust Certificate.

This Interim Equipment Trust Certificate is one of the Interim Certificates referred to in the Trust Agreement, which, together with the Equipment Trust Certificates referred to in the Trust Agreement, have been or are to be issued by the Trustee pursuant to the terms of the Trust Agreement. The rights of the Trustor under the Trust Agreement, as well as the beneficial interest of the Trustor in and to the Trust Estate, are subject and subordinate to the rights of the holders of the Interim Equipment Trust Certificates to the extent provided in the Trust Agreement. Reference is hereby made to the Trust Agreement for a statement of the rights of the holder of this Interim Equipment Trust Certificate and of the rights of holders of any other Interim Equipment Trust Certificates, and of the Equipment Trust Certificates, and of the Trustor, as well as for a statement of the terms and conditions of the trusts created by the Trust Agreement, to all of which terms and conditions each holder hereof agrees by its acceptance of this Interim Equipment Trust Certificate.

This Interim Equipment Trust Certificate is not subject to prepayment from the Trust Estate except as provided in Sections 5.02, 5.03 and 5.06 of the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Interim Equipment Trust Certificate to be duly executed on its behalf by an authorized officer as of the date first above written.

THE FIDELITY BANK,
Trustee

By: _____
Authorized Officer

(b) The Equipment Trust Certificates shall be substantially in the form set forth below:

(FORM OF EQUIPMENT TRUST CERTIFICATE)

THE FIDELITY BANK

Trustee Under Equipment Trust Agreement

Dated as of _____, 1978

(CONSOLIDATED RAIL CORPORATION)

227 Tri-level Enclosed
Auto Racks

9¾% Equipment Trust Certificate

\$ _____, 1978

THE FIDELITY BANK, as trustee ("Trustee") under the Equipment Trust Agreement dated as of _____, 1978 ("Trust Agreement"; the defined terms therein not otherwise defined herein being herein used with the same meanings), between HELEASCO TWO, INC. ("Trustor") and the Trustee, hereby promises to pay to _____, or registered assigns, the principal sum of \$ _____, together with interest on the amount of said principal sum remaining unpaid from time to time from the date of this Equipment Trust Certificate until payment in full of said principal sum at the rate of nine and three-quarters (9¾) percent per annum (computed on the basis of a 360-day year of twelve 30-day months), payable in one hundred nineteen (119) consecutive monthly payments of principal and interest each in the amount specified by reference to the amortization schedule attached hereto (except that the last such payment shall be in an amount sufficient to discharge the accrued interest on, and unpaid principal of, this Equipment Trust Certificate), commencing _____ 5, 1978, and on the fifth day of each month thereafter.

This Equipment Trust Certificate, to the extent permitted by applicable law, shall bear interest at the rate of twelve and one-half (12½) percent per annum (computed as aforesaid) on any part of the principal or interest hereof not paid when due for any period during which the same shall be overdue.

All payments of principal and interest hereunder and under the Trust Agreement shall be made only from the income and proceeds from the Trust Estate and without recourse against the Trustor or the Trustee in its individual capacity and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V of the Trust Agreement; and each holder hereof, by its acceptance of this Equipment Trust Certificate, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that neither the Trustor nor the Trustee is or shall be personally liable to the holder hereof for any amounts payable under this Equipment Trust Certificate or the Trust Agreement.

Principal and interest shall be payable at the Corporate Trust Department of the Trustee at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, or at the office of any successor Trustee, in lawful money of the United States of America, except as provided in Section 3.04 of the Trust Agreement.

Each holder hereof by its acceptance of this Equipment Trust Certificate agrees that, except as otherwise provided in Section 3.05 of the Trust Agreement, each level payment and any other payment received by it hereunder shall be applied, *first*, to the payment of accrued interest on this Equipment Trust Certificate (as well as any interest on overdue principal or interest) to the date of such payment, *second*, to the payment of the principal amount of this Equipment Trust Certificate then due and *third*, the balance, if any, remaining thereafter to the payment of the principal amount of this Equipment Trust Certificate remaining unpaid, in the manner set forth in Section 3.05 of the Trust Agreement.

This Equipment Trust Certificate is one of the Equipment Trust Certificates referred to in the Trust Agreement, which have been or are to be issued by the Trustee pursuant to the terms of the Trust Agreement. The rights of the Trustor under the Trust Agreement, as well as the beneficial interest of the Trustor in and to the Trust Estate, are subject and subordinate to the rights of the holders of the Equipment Trust Certificates to the extent provided in the Trust Agreement. Reference is hereby made to the Trust Agreement for a

statement of the rights of the holder of this Equipment Trust Certificate and of the rights of the holders of any other Equipment Trust Certificates and of the Trustor, as well as for a statement of the terms and conditions of the trusts created by the Trust Agreement, to all of which terms and conditions each holder hereof agrees by its acceptance of this Equipment Trust Certificate.

This Equipment Trust Certificate is subject to prepayment as provided in Sections 5.02 and 5.03 of the Trust Agreement and, if prepayment is made pursuant to Section 5.02 of the Trust Agreement, such prepayment shall be made on the termination date specified in Section 7 of the Lease with respect to such Item of Equipment, at a price equal to the principal amount to be prepaid, determined as hereinafter provided, together with interest accrued to the date of prepayment.

The principal amount of this Equipment Trust Certificate to be prepaid from amounts received by the Trustee pursuant to Section 7 of the Lease shall be in the same proportion to the principal amount of this Equipment Trust Certificate outstanding on the termination date referred to above (after application of the monthly payment due on this Equipment Trust Certificate on such termination date, or if such termination date is not a Payment Date, after deduction of the portion of any amount held by the Trustee in accordance with Section 5.01 of the Trust Agreement which is applicable to the principal of this Equipment Trust Certificate) as the Purchase Price of the Item of Equipment with respect to which the Trustee has received such amounts is to the aggregate Purchase Price of (x) all Items of Equipment subject to the Lease on such termination date and (y) all Items of Equipment (other than that Equipment included in (x) above) with respect to which the Trustee has received such amounts on such dates.

As provided in Section 9.03 of the Trust Agreement, the Trustor may, after the Trustee, acting with the consent of a Majority in Interest of Participants pursuant to Section 6.01 thereof, has declared the Lease to be in default (unless such declaration has been rescinded), purchase all outstanding Equipment Trust Certificates, upon payment to holders thereof of the aggregate unpaid principal amount thereof, together with accrued interest thereon to the date

of payment, plus all other sums then due and payable to such holders hereunder or under the Finance Agreement or under the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Equipment Trust Certificate to be duly executed on its behalf by an authorized officer as of the date first above written.

THE FIDELITY BANK,
Trustee

By: _____
Authorized Officer

SECTION 3.02. Subject to fulfillment of the conditions specified in Article IV, on (a) each Closing Date, there shall be issued to each Loan Participant a single Interim Certificate dated such date; and (b) the Final Closing Date, there shall be issued to each Loan Participant a single Equipment Trust Certificate in the amount of such Loan Participant's Allocated Commitment actually received by the Trustee; in each case payable to such Loan Participant (or such other person as such Loan Participant shall have designated in writing to the Trustee) in a principal amount equal to the amount of such Loan Participant's Allocated Commitment received by the Trustee on or before such date with respect to such Closing Date or Final Closing Date, as the case may be. Each Certificate shall be payable as to principal and interest and otherwise as provided in the form specified in Section 3.01.

SECTION 3.03. All payments to be made under the Certificates and under this Trust Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V hereof. Each holder of a Certificate, by its acceptance thereof, agrees that it will look solely to the income and proceeds from the Trust Estate, and without recourse against the Trustor or the Trustee in its individual capacity, to the extent available for distribution to such holder as above provided and that neither the Trustor nor the

Trustee is or shall be personally liable to the holder of any Certificate for any amounts payable under the Certificates or, except as provided in Sections 7.01 and 7.03, with respect to the Trustee, and Section 8.02 and Article IX, with respect to the Trustor, under this Trust Agreement.

SECTION 3.04. The principal of and interest on each Certificate and the amounts payable to the Trustor pursuant to this Trust Agreement will be payable at the office of the Trustee referred to in Section 12.05, in lawful money of the United States of America. Notwithstanding the foregoing or any provision in any Certificate to the contrary, the Trustee will pay, unless otherwise directed by such holder or the Trustor by written notice to the Trustee, all amounts payable by the Trustee to the holder of a Certificate or a designee or nominee therefor or to the Trustor (including all amounts distributed pursuant to Article V of this Trust Agreement) (i) by crediting the amount to be distributed to the account of the party maintained with the Trustee, or (ii) by transferring by wire the amount to be distributed to such party to such account at a bank in the United States, including a Federal Reserve Bank, as shall have been specified by such party for credit to its account maintained by such bank, without any presentment or surrender of any Certificate or otherwise, except that in the case of the final payment in respect of any Certificate, such Certificate shall be surrendered to the Trustee. The Trustee may deem and treat the person in whose name any Certificate shall have been issued by the Trustee as the absolute owner and holder of such Certificate for the purpose of receiving payment of all amounts payable by the Trustee with respect to such Certificate and for all other purposes, unless and until there is full compliance with the provisions of Section 3.07.

SECTION 3.05. In the case of each Equipment Trust Certificate, each payment of principal and interest and any other payments made thereunder (other than any amounts distributed by the Trustee pursuant to clause "third" of Section 5.02 or clause "second" of Sections 5.03 and 5.06) shall be applied, *first*, to the payment of accrued interest on such Equipment Trust Certificate to the date of such payment, *second*, the payment of the principal amount of such Equipment Trust Certificate then due thereunder and *third*, the bal-

ance, if any, remaining thereafter to the payment of the principal amount of such Equipment Trust Certificate remaining unpaid. The amount of each payment of such Equipment Trust Certificate becoming due after application pursuant to clause "third" above shall be adjusted by the Trustee as directed by the Trustor so that, upon the due payment of all payments thereafter, the entire unpaid principal amount of and all accrued interest on such Equipment Trust Certificate shall have been paid in full.

SECTION 3.06. A holder of a Certificate shall have no further beneficial interest in, or other right with respect to, the Trust Estate when and if the principal of and interest on all Certificates held by such holder and all other sums payable to such holder hereunder, under the Lease, the Finance Agreement and such Certificates shall have been paid in full.

SECTION 3.07. (a) The Trustee shall maintain a register for the purpose of registering transfers and exchanges of Certificates. A holder of a Certificate intending to transfer any or all of the Certificates shall (x) surrender such Certificate or Certificates to the Trustee at its office referred to in Section 12.05 hereof, together with a written instrument of transfer with signature guaranteed and direction from such holder for the issuance of a new Certificate or Certificates, specifying the denomination or denominations of the same and the name and address of the payee or payees, and (y) deliver to the Trustee (at such holder's expense) an opinion (which shall be in form and substance satisfactory to the Trustee) of counsel (satisfactory to the Trustee) to the effect that such transfer may be made by the holder of such Certificate or Certificates without violation of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") or the registration provisions of the Securities Act of 1933, as amended (the "Securities Act"). The right of such Participant or other holder of a Certificate to transfer such Certificate, as expressed herein, shall be subject to the foregoing and no transfer may be made except on the register maintained by the Trustee and unless evidence of compliance with the foregoing shall have been delivered to the Trustee.

(b) The Certificates are being issued under this Trust Agreement pursuant to the express understanding, and specific representation and warranty made by each Loan Participant in the Finance Agreement, that (i) such Loan Participant is acquiring each Certificate for its own account; and (ii) in each case, each Certificate is being acquired for investment and not with a view to the distribution thereof or with any present intention of selling such Certificate, provided that, subject to applicable federal and state securities laws, the disposition of such Certificate shall at all times be within its control. Each Loan Participant and every subsequent holder of a Certificate shall by its acceptance of a Certificate issued under this Trust Agreement be deemed to have represented and warranted to the Trustee that it will make no sale or other distribution of the Certificate or Certificates issued to it, in whole or in part, in violation of the Trust Indenture Act or the registration provisions of the Securities Act. Each Certificate issued under this Trust Agreement shall bear a legend substantially as follows:

"This (Interim) Equipment Trust Certificate has not been registered under the Securities Act of 1933, as amended, or approved by the Interstate Commerce Commission pursuant to Section 20a of the Interstate Commerce Act, and the sale, transfer or disposition of this (Interim) Equipment Trust Certificate is subject to Section 3.07 of the Trust Agreement, dated as of _____, 1978, pursuant to which this (Interim) Equipment Trust Certificate was issued, copies of which are on file at the Corporate Trust Department of the Trustee."

(c) Promptly upon compliance with subsection (a) of this Section the Trustee will issue a new Certificate or Certificates of the same nature, in the same aggregate original face amount, dated the same date or dates as the Certificate or Certificates surrendered, and in such denomination or denominations and payable to such subsequent holder as shall be specified in the written direction from such holder. Nothing herein contained shall prevent any holder of Certificates from consolidating such Certificates of the same nature into a lesser number of Certificates of the same nature. The Trustee shall make a notation on

each new Certificate of the amount of all payments or prepayments of principal previously made on the old Certificate or Certificates with respect to which such new Certificate is issued and of the then outstanding principal amount of the new Certificate and the date to which interest on such old Certificate or Certificates has been paid. The Trustee shall not be required to exchange or transfer any surrendered Certificate as above provided during the five-day period preceding the due date of any payment on such Certificate.

SECTION 3.08. If any Certificate shall become mutilated, destroyed, lost or stolen, the Trustee shall, upon the written request of the holder of such Certificate and compliance with the other conditions of this Section, execute and deliver in replacement thereof a new Certificate of the same nature, payable in the same original principal amount, dated the same date as the Certificate so mutilated, destroyed, lost or stolen. If the Certificate being replaced has become mutilated, such Certificate shall be surrendered to the Trustee. If the Certificate being replaced has been destroyed, lost or stolen, the holder of such Certificate shall furnish to the Trustee such security or indemnity as may be required by the Trustee to save the Trustee harmless, and evidence satisfactory to the Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof; provided, however, that if the holder of such Certificate is an original Loan Participant, the written undertaking of such Loan Participant delivered to the Trustee shall be sufficient security and indemnity.

SECTION 3.09. Upon the issuance of a new Certificate or Certificates pursuant to Sections 3.07 or 3.08, the Trustee may require the payment of a sum to reimburse it for, or to provide funds for, the payment of any tax or other governmental charge or any charges and expenses connected therewith paid or payable by the Trustee, including the reasonable fees and expenses of its counsel.

ARTICLE IV

ACCEPTANCE AND DELIVERY OF EQUIPMENT; ISSUANCE OF CERTIFICATES

SECTION 4.01. The Trustor hereby authorizes and directs the Trustee to, and the Trustee agrees that on each Delivery Date it will, subject to due compliance with the terms of Section 4.02, accept delivery from the Builder of each Item of Equipment then delivered.

SECTION 4.02. The obligation of the Trustee to take the action required by Section 4.01 on each Delivery Date shall be subject to the following conditions precedent:

(a) the terms and conditions of Section 3 of the Finance Agreement shall have been satisfied; and

(b) the Trustee shall have received a (i) Certificate of Delivery from the Lessee, and (ii) Builder's Delivery Certificate from the Builder, with respect to each Item of Equipment accepted on such Delivery Date; and

(c) the aggregate Purchase Price of each Item of Equipment accepted on such Delivery Date, together with the aggregate Purchase Price of all Items of Equipment previously accepted does not exceed the sum of the Aggregate Loan Participants' Commitment and the Trustor's Commitment; and

(d) the Trustee shall not have actual knowledge of the occurrence of any Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default).

SECTION 4.03. The Trustor hereby authorizes and directs the Trustee to, and the Trustee agrees that on each Closing Date it will, subject to due compliance with the terms of Section 4.04:

(a) accept from the Builder a bill of sale with respect to each Item of Equipment delivered and accepted from and after the preceding Closing Date (if applicable) but prior to such current Closing Date, and specified in the Certificate(s) of Delivery; and

(b) accept from the Lessee the Certificate of Cost with respect to each Item of Equipment delivered and accepted through the end of the previous month, and specified in the Certificate(s) of Delivery; and

(c) make payment, to the extent received by the Trustee, in funds of the type received from the Participants, as follows:

(i) to the Builder in an amount equal to that portion of the Purchase Price for each Item of Equipment as to which the Trustee shall then have received a Certificate of Delivery, as shown in an invoice from the Builder delivered to the Trustee on or prior to the Closing Date and certified correct by Lessee in the Certificate of Cost; and

(ii) to such persons and in such amounts as shall constitute elements of the Purchase Price (as shown on such Certificate of Cost) not payable to the Builder pursuant to the Purchase Order as evidenced by the invoice of the Builder for each Item of Equipment; and

(d) issue to each Loan Participant (or its designee) an Interim Certificate in the amount of the Loan Participant's Allocated Commitment received by the Trustee with respect to the Closing Date and otherwise as provided in Section 3.02; and

(e) accept from the Trustor and take such action as may be required to incorporate in the Lease any revised Schedule B to the Lease as may be required to reflect adjustments in the Purchase Price of the Equipment.

SECTION 4.04. The obligation of the Trustee to take the action required by Section 4.03 on each Closing Date shall be subject to the following conditions precedent:

(a) the Trustee shall have received a Certificate of Cost from the Lessee with respect to each Item of Equipment accepted on each Delivery Date; and

(b) the Trustee shall have received a bill of sale with respect to each Item of Equipment as required in Section 4.03(a); and

(c) the terms and conditions of Sections 4.01 and 4.02 shall have been satisfied with respect to each Item of Equipment specified in the Certificate of Cost; and

(d) the Trustee shall have received the full amount of the Trustor's Commitment with respect to each Item of Equipment specified in the Certificate of Cost; and

(e) the Trustee shall have received the full amount of each Loan Participant's Allocated Commitment with respect to each Item of Equipment specified in the Certificate of Cost; and

(f) the Trustee shall not have actual knowledge of the occurrence of any Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default).

SECTION 4.05. The Trustor hereby authorizes and directs the Trustee to, and the Trustee agrees that on the Final Closing Date it will, subject to due compliance with the terms of Section 4.06:

(a) take the actions required of it pursuant to the terms of Section 4.03; and

(b) accept the surrender and effect the cancellation of the Interim Certificates; and

(c) accept from the Trustor and attach to each Equipment Trust Certificate to be issued by the Trustee, the Amortization Schedule approved by the Participants; and

(d) issue to each Loan Participant (or its designee) an Equipment Trust Certificate in the aggregate amount of the Loan Participant's Allocated Commitment received by the Trustee with respect to the Final Closing Date and the aggregate amount of all Interim Certificates surrendered by the Loan Participant, and otherwise as provided in Section 3.02.

SECTION 4.06. The obligation of the Trustee to take the action required by Section 4.05 on the Final Closing Date shall be subject to the following conditions precedent:

(a) the terms and conditions of Sections 4.02 and 4.04 shall have been satisfied; and

(b) the Interim Certificates shall have been surrendered to the Trustee.

ARTICLE V

RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST ESTATE

SECTION 5.01. Except as otherwise provided in Section 5.03, each payment of rent made under Section 2 of the Lease as well as any payment of interest on overdue installments of rent received by the Trustee at any time shall be distributed by the Trustee on the Payment Date with respect to which payment was received or if such payment is not received on or before such Payment Date as soon thereafter as it shall be received, in the following order of priority: *first*, so much of such payment as shall be required to pay in full the aggregate amount of the payments of interest only or principal and interest (as well as any interest on overdue principal or interest) then due on the Certificates shall be distributed to the holders of the Certificates ratably without priority of one over the other; and *second*, the balance, if any, of such payment remaining thereafter shall be distributed to the Trustor.

SECTION 5.02. Except as otherwise provided in Section 5.03, any payment received by the Trustee from the Lessee pursuant to Section 7 of the Lease as the result of a Casualty Occurrence, as well as any insurance, condemnation or other payment referred to in Section 7 of the Lease received directly or through Lessee, to the extent such payment is not required to be paid to Lessee pursuant to said Section 7, shall be distributed by the Trustee in the following order of priority: *first*, so much of such payment as shall be required to reimburse the Trustee for any expenses (to the extent not previously reimbursed), including the reasonable fees and expenses of its counsel, in connection with any such sale or with the collection or distribution of such payment shall be distributed to the Trustee; *second*, so much of such payment shall be distributed to the holders of the Certificates ratably, without priority of one over the other, as shall be required so that the amount so distributed shall be in the same proportion to the principal amount of such Certificates out-

standing on the rental payment date next succeeding such Casualty Occurrence (after deduction of the portion of any amount held by the Trustee in accordance with Section 5.01 hereof which is applicable to the principal of such Certificates), as the Purchase Price of the Item of Equipment with respect to which the Trustee has received such payment is to the aggregate Purchase Price of (x) all Equipment subject to the Lease on such date and (y) all Equipment (other than those which are included in clause (x) above) with respect to which the Trustee has received such payment on such date; *third*, in the manner provided in clause "second" of Section 5.03; and *fourth*, the balance, if any, of such payment remaining thereafter shall be distributed to the Trustor.

SECTION 5.03. Except as otherwise provided in Section 5.04, all payments received and amounts realized by the Trustee after the occurrence of an Event of Default pursuant to Section 11 of the Lease, as well as all payments or amounts then held or thereafter received by the Trustee as part of the Trust Estate, unless such Event of Default shall have been cured, shall be distributed by the Trustee in the following order of priority: *first*, so much of such payments or amounts as shall be required to reimburse the Trustee for any tax, expense or other out-of-pocket loss, including the reasonable fees and expenses of its counsel, incurred by the Trustee and for the reasonable remuneration of the Trustee (to the extent not previously reimbursed or paid) shall be distributed to the Trustee; *second*, so much of such payments or amounts as shall be required to reimburse the holders of the Certificates for payments, together with interest thereon at the rate of twelve and one-half (12½) percent per annum, made to the Trustor pursuant to Section 6.03(b) (to the extent not previously reimbursed) shall be distributed to the holders of the Certificates ratably, without priority of one over the other, in accordance with the amount of the payment or payments made by each such holder pursuant to Section 6.03(b) and applicable, as provided in said Section, to the Certificates held by such holder at the time of distribution by the Trustee; *third*, so much of such payments or amounts as shall be required to pay in full the aggregate unpaid principal amount of all Certificates then outstanding, plus the accrued but unpaid interest thereon to the date of distribution, shall be distributed to the holders of such Certificates ratably, without priority of one over the other; and *fourth*, the balance, if any, of such

payments or amounts remaining thereafter shall be distributed to the Trustor.

SECTION 5.04. All payments received by the Trustee from Lessee pursuant to Section 10(b) of the Lease shall be distributed by the Trustee to the Trustor.

SECTION 5.05. Except as otherwise provided in Section 5.03, and subject to Section 5.04, any payments received by the Trustee for which provision as to the application thereof is made in the Lease shall be applied to the purpose for which such payment was made in accordance with the terms of the Lease.

SECTION 5.06. Except as otherwise provided in Sections 5.03, 5.04 and 5.05:

(a) any payments received by the Trustee for which no provision as to the application thereof is made in the Lease or elsewhere in this Article V, and

(b) all payments received and amounts realized by the Trustee under the Lease or otherwise with respect to the Equipment (including, without limitation, all amounts realized upon the sale or re-letting of the Equipment after the termination of the Lease with respect thereto) to the extent received or realized at any time after payment in full of the principal of and interest on all Certificates, as well as any other amounts remaining as part of the Trust Estate after payment in full of the principal of and interest on all Certificates issued hereunder, shall be distributed by the Trustee in the following order of priority: *first*, in the manner provided in clause "first" of Section 5.03; *second*, in the manner provided in clause "second" of Section 5.03; and *third*, in the manner provided in clause "fourth" of Section 5.03.

ARTICLE VI

DUTIES OF THE TRUSTEE

SECTION 6.01. In the event the Trustee shall have actual knowledge of an Event of Default, the Trustee shall give prompt written notice of such Event of Default to each holder of a Certificate and the Trustor by certified mail, postage prepaid, unless such Event of Default shall have been remedied before the giving of such notice.

Subject to the terms of Section 6.03, the Trustee shall take such action with respect to an Event of Default, including, but without limitation, waiving such Event of Default or the consequences thereof, as the Trustee shall be directed in writing by a Majority in Interest of Participants. If the Trustee shall not have received instructions as above provided within twenty (20) days after mailing notice of such Event of Default to the holders of the Certificates and the Trustor, the Trustee may, until it shall have received such instructions, refrain from taking any action with respect to such Event of Default. In the event of the occurrence of an Event of Default pursuant to Section 11 of the Lease, the unpaid principal amount of all Certificates then outstanding with accrued interest thereon shall immediately become due and payable without further act or notice of any kind. For all purposes of this Trust Agreement, in the absence of actual knowledge, the Trustee shall not be deemed to have knowledge of an Event of Default unless notified in writing by Lessee or one or more holders of Certificates or the Trustor, except that the Trustee shall be deemed to have actual knowledge of an Event of Default upon the failure of Lessee to pay any installment of rent within five (5) days after the same has become due and payable.

SECTION 6.02. Subject to the terms of Section 6.03, the Trustee shall, but only upon the written instructions at any time and from time to time of a Majority in Interest of Participants, take such of the following actions as may be specified in such instructions:

- (i) give such notice or direction or exercise such right or power under the Lease, the Purchase Order or the Assignment as shall be specified in such instructions, or take such other action as shall be specified in such instructions;

- (ii) approve as satisfactory to it all matters required by the terms of the Lease to be satisfactory to it, it being understood that without the written instructions of a Majority in Interest of Participants, the Trustee shall not approve any such matter as satisfactory to it;

- (iii) subject to Section 14 of the Lease, after the expiration or earlier termination of the Lease with respect to the Equipment, convey all the Trustee's right, title and interest in and to

the Equipment for such amount, on such terms and to such purchaser or purchasers as shall be designated in such instructions, or lease or otherwise dispose of the Equipment on such terms as shall be designated in such instructions.

SECTION 6.03. (a) The Trustee shall not be required to take any action under Sections 6.01 or 6.02 unless the Trustee shall have been indemnified by the Trustor or its designee, in manner and form reasonably satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action; and if a Majority in Interest of Participants shall have directed the Trustee to take any such action, the Trustor or its designee agrees to furnish such indemnity as shall be required. The Trustee shall not be required to take any action under Sections 6.01 or 6.02, nor shall any other provision of this Trust Agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall have been advised by counsel that such action is contrary to the terms of the Lease or is otherwise contrary to law.

(b) Each holder of a Certificate by its acceptance of such Certificate agrees that if, prior to payment in full of all Certificates issued hereunder, the Trustor shall make any payment to, or deposit with, the Trustee required to be made pursuant to paragraph (a) of this Section, such holder will reimburse the Trustor the ratable share (as hereinafter calculated) of such payment or deposit applicable to each Certificate held by such holder, such ratable share being computed with reference to the Certificates then outstanding. In calculating such ratable share, the Trustor shall be entitled to receive from the holders of such Certificates aggregate reimbursement not in excess of 74.389% of such payment to, or deposit with, the Trustee.

SECTION 6.04. The Trustee shall have no duty or obligation to, and agrees that it will not, manage, control, use, sell, dispose or otherwise deal with any Item of Equipment or any other part of the Trust Estate, or otherwise take or refrain from taking any action under, or in connection with, the Lease or the Assignment or any action with respect to the Equipment, except as expressly provided by the terms of this Agreement and the Lease and as expressly provided in written instructions pursuant to Sections 6.01 or 6.02;

and no implied duties or obligations shall be read into this Trust Agreement against the Trustee. The Trustee nevertheless agrees that it will, at its own cost and expense, promptly take such action as may be necessary to duly discharge any liens or encumbrances on any part of the Trust Estate which result from claims against the Trustee not related to the ownership of the Equipment or the administration of the Trust Estate.

SECTION 6.05. The Trustee shall file all fiduciary income tax returns required in connection with the Trust by any state or federal statute or regulation. The Trustor agrees that it will cooperate fully with the Trustee in the preparation of such returns and will cause all required information promptly to be provided to the Trustee.

ARTICLE VII

THE TRUSTEE

SECTION 7.01. The Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Trustee shall not be answerable or accountable under any circumstances, except for its own willful misconduct or gross negligence.

SECTION 7.02. Except in accordance with written instructions furnished pursuant to Section 6.02 and without limitation of the generality of Section 6.04, the Trustee shall have no duty (i) to see to any recording or filing of the Lease or of this Trust Agreement, or to see to the maintenance of any such recording or filing, (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, whether or not Lessee shall be in default with respect thereto, (iii) except as provided in Section 6.04, to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, (iv) to confirm or verify any financial statements of Lessee or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of Lessee's covenants under the Lease. Notwithstanding the foregoing, the Trustee will furnish to the Loan Participants, to the Trustor and to any registered holder of a Certificate (to

the extent the same have not previously been furnished to the Participants or such holders) promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to or prepared by the Trustee hereunder, under the Lease or under the Assignment.

SECTION 7.03. THE TRUSTEE MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF ANY ITEM OF EQUIPMENT OR AS TO ITS TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT WHATSOEVER EXCEPT THAT THE TRUSTEE HEREBY REPRESENTS AND WARRANTS TO EACH PARTICIPANT THAT EACH ITEM OF EQUIPMENT SHALL BE FREE OF LIENS AND ENCUMBRANCES WHICH MAY RESULT FROM CLAIMS AGAINST THE TRUSTEE NOT RELATED TO THE OWNERSHIP OF THE EQUIPMENT OR THE ADMINISTRATION OF THE TRUST ESTATE OR ANY OTHER TRANSACTION PURSUANT TO THIS TRUST AGREEMENT OR ANY DOCUMENT INCLUDED IN THE TRUST ESTATE.

SECTION 7.04. Monies received by the Trustee hereunder need not be segregated in any manner except to the extent required by law and may be deposited with the Trustee under such general conditions as may be prescribed by law applicable to the corporate banking department of the Trustee, and the Trustee shall not be liable for any interest thereon.

SECTION 7.05. The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of the Board of Directors or the Executive Committee, if any, of Lessee, certified by the Secretary or an Assistant Secretary of Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said Board or Executive Committee

and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, or by the President, or by any Vice President of Lessee, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants, and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

SECTION 7.06. In accepting the trusts hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity; and all persons, other than the holders of Certificates or the Trustor to the extent provided in Section 7.01, having any claim against the Trustee by reason of the transactions contemplated hereby shall look only to the Trust Estate for payment or satisfaction thereof.

SECTION 7.07. Except as provided in Article V and Section 7.09 hereof, the Trustee agrees that it shall have no right against the holders of the Certificates, the Participants or, except as specifically provided in this Trust Agreement, the Trust Estate for any fee as compensation for services hereunder.

SECTION 7.08. Any and all exculpatory provisions, immunities and indemnities in favor of the Trustee under this Agreement shall inure to the benefit of the Trustee in its capacity as such, as Lessor under the Lease and as Assignee under the Assignment.

SECTION 7.09. The Trustee shall, to the extent not provided for under any applicable provisions of Section 6.03 hereof or under Section 10(a) of the Lease, be entitled to receive from the Trustor reasonable compensation as determined by the Trustee and reim-

bursement for its expenses and disbursements (including compensation and expenses of its counsel, accountants or other skilled persons and all other persons not regularly employed by the Trustee) in connection with its responsibility hereunder. In the event unusual duties or responsibilities are imposed on the Trustee hereunder, including without limitation duties and responsibilities on the occurrence of any Event of Default, sale or other disposition of any Item of Equipment, instigation of a lawsuit or claim, or any other reason, the Trustee shall, to the extent not provided for under Section 6.03 hereof or under Section 10(a) of the Lease, be entitled to receive from the Trustor additional compensation, reasonable in regards to its additional duties or responsibility, and reimbursement for its reasonable expenses and disbursements as set forth above.

SECTION 7.10. When used in this Trust Agreement, the term "actual knowledge" of the Trustee shall mean the actual knowledge of (i) the president, any vice president, or (ii) any corporate trust officer or any other employee administering the Trust Estate.

ARTICLE VIII

INDEMNIFICATION BY TRUSTOR

SECTION 8.01. The Trustor hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, save and keep harmless the Trustee, its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Trustee (whether or not also indemnified against by Lessee under the Lease or under the Finance Agreement or also indemnified against by Builder or any other person) in any way relating to or arising out of this Agreement, the Certificates, the Lease, the Finance Agreement, the Purchase Order or the Assignment or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Item of Equipment

(including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of the Trustee hereunder, except (i) expenses resulting from wilful misconduct or gross negligence on the part of the Trustee in the performance of its duties hereunder, and (ii) expenses resulting from the material breach of any representation or warranty contained in Section 7.03 hereof and in Section 6(e) of the Finance Agreement. The indemnities contained in this Section shall survive the termination of this Agreement and any resignation or removal of the Trustee hereunder.

SECTION 8.02. The Trustor hereby agrees to indemnify and hold harmless all holders from time to time of Certificates from and against any reduction in the amount payable out of the Trust Estate to such holders in respect of such Certificates or other loss, cost or expense reasonably incurred by such holders as a result of the imposition or enforcement of any lien or claim against the Trust Estate by any taxing authority because of non-payment by the Trustor of taxes imposed or measured by the net income of the Trustor by such taxing authority.

ARTICLE IX

TRANSFER OF TRUSTOR'S INTEREST

SECTION 9.01. The Trustor shall not assign, convey or otherwise transfer any of its right, title or interest in and to this Agreement, the Trust Estate or the Finance Agreement: provided, however, that the Trustor may, subject to the receipt by the Trustee of an opinion of counsel (who may be counsel to the Trustor) reasonably satisfactory to counsel to Trustee as to compliance with the restrictions recited in Section 6(b) of the Finance Agreement, convey to any person (hereinafter referred to as the "transferee") all, but not less than all, of its right, title and interest as the Trustor in and to this Agreement, the Trust Estate and the Finance Agreement, provided (i) the transferee enters into an agreement or agreements in form and substance satisfactory to counsel to the Trustee and to the Loan Participants, whereby such person confirms that it shall be

deemed a party to the Finance Agreement and a party to this Trust Agreement and agrees to be bound by all the terms of, and to undertake all of the obligations of the Trustor contained in, the Finance Agreement and this Trust Agreement, and (ii) the Trustor assumes the risk of any adverse tax consequences to the Trustor resulting from such conveyance, the Trustor shall, (x) unless the requirement of a tax indemnification agreement shall have been waived by the holders of more than fifty (50) percent in aggregate principal amount of Certificates pursuant to Section 9.02, enter in a tax indemnification agreement, in form and substance satisfactory to the Loan Participants, with the Trustee for the benefit of the holders of the Certificates pursuant to which the Trustor will indemnify and hold harmless all present and future holders of Certificates, from and against any reduction in the amount payable out of the Trust Estate to such holders in respect of Certificates, or other loss, cost or expense incurred by such holders, as a result of the imposition or enforcement of any lien or claim against the Trust Estate by any taxing authority because of the nonpayment by the transferee of taxes imposed on or measured by the net income of the transferee by such taxing authority and (y) remain jointly and severally liable with the transferee for its obligations under Section 8.01. Under any such conveyance by the Trustor to the transferee as above provided, such transferee shall be deemed the Trustor for all purposes hereof, and shall be deemed to have invested all the Trustor's Commitment in the Equipment, and each reference herein to the Trustor shall thereafter be deemed a reference to the transferee.

SECTION 9.02. Any Trustor proposing to transfer its interests hereunder pursuant to Section 9.01 shall give written notice to the Trustee, specifying the name and address of the proposed transferee and specifying the facts necessary to determine whether or not the holders of the Certificates are entitled to tax indemnification in respect of such transfer pursuant to clause (x) of clause (iii) of the proviso to the first sentence of Section 9.01 and the Trustee shall promptly notify each holder of a Certificate in writing of the proposed transfer, requesting each holder of a Certificate to notify the Trustee in writing whether or not it requests such tax indemnification, if the holders of Certificates are entitled to such indemnity. Any such holder which has not notified the Trustee within thirty (30)

days after such notice from the Trustee shall be deemed to have waived such tax indemnification. Not later than five (5) days after the end of such thirty-day period the Trustee shall notify the Trustor whether or not tax indemnification in respect of such transfer has been waived by holders of more than fifty (50) percent in aggregate principal amount of Certificates outstanding as of the date of such notice from the Trustee.

SECTION 9.03. At any time after the occurrence and during the continuance of an Event of Default and upon the written request of the Trustor, each holder of a Certificate agrees that it will, upon receipt from the Trustor of an amount equal to the aggregate unpaid principal amount of all Certificates then held by such holder, together with accrued interest thereon to the date of payment, plus all other sums then due and payable to such holder hereunder or under the Finance Agreement, the Lease and such Certificates, forthwith sell, assign, transfer and convey to the Trustor all of the right, title and interest of such holder in and to the Trust Estate, the Finance Agreement, this Trust Agreement and all Certificates held by such holder, and the Trustor shall assume all of such holder's obligations under the Finance Agreement. If the Trustor shall so request, such holder will comply with all the provisions of Section 3.07, at the Trustor's expense, to enable new Certificates to be issued to the Trustor in such denominations as the Trustor shall request. All charges and expenses required pursuant to Section 3.09 in connection with the issuance of any such new Certificate shall be borne by the Trustor.

SECTION 9.04. Unless an Event of Default under Section 11 of the Lease shall have occurred and be continuing, upon Lessee's failure to make any payment of rent when the same shall have become due, the Trustor may pay to the Trustee, prior to the next succeeding Payment Date, an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the outstanding Certificates and, unless Lessee has failed for any reason to pay in full within the grace period the rent for each of the two (2) preceding monthly lease periods, such payment by the Trustor shall be deemed to cure any Event of Default which otherwise would have arisen from such fail-

ure of Lessee; upon such payment by it the Trustor shall be subrogated to the rights of the holders of the Certificates in respect of such payment of rent and payment of interest on account of its being overdue, and, notwithstanding Section 5.01 hereof, shall upon written notice to the Trustee by the Trustor and if no other Event of Default shall have occurred and be continuing, and if all principal and interest payments due on the Certificates at the time of receipt by the Trustee of such payment of rent have been paid, be entitled to receive such rent and such interest upon receipt thereof by the Trustee; provided, however, that in the event that the principal of and interest on the Certificates shall have become due and payable pursuant to Section 6.01 hereof, such subrogation shall be subordinate to the rights of the holders of the Certificates in respect of such payment of rent and such interest prior to receipt by the Trustor of any amount pursuant to such subrogation, and provided further, however, that the Trustor will not seek to recover any such payment (or any amount in lieu thereof) except pursuant to the foregoing right of subrogation.

ARTICLE X

SUCCESSOR TRUSTEE

SECTION 10.01. (a) The Trustee or any successor thereto may resign at any time without cause by giving at least thirty (30) days' prior written notice to the Trustor and each holder of a Certificate. In addition, a Majority in Interest of Participants may at any time remove the Trustee without cause by an instrument in writing delivered to the Trustee, the Trustor and each other holder of a Certificate. Any such resignation or removal shall only become effective upon the appointment as hereinafter provided of a successor Trustee and the acceptance of such appointment by such successor Trustee. In the case of the resignation or removal of the Trustee, a Majority in Interest of Participants may appoint a successor Trustee by an instrument signed by such Majority in Interest of Participants. If a Majority in Interest of Participants shall not have appointed a successor Trustee within thirty (30) days after such notice of resignation or removal, the Trustee, the Trustor or any holder of a Certificate may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have

been appointed by a Majority in Interest of Participants as above provided. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed by a Majority in Interest of Participants within one year from the date of the appointment by such court.

(b) Any successor Trustee, whether appointed by a court or by a Majority in Interest of Participants or otherwise, shall execute and deliver to the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Trustee in the trusts hereunder with like effect as if originally named as a Trustee herein; but nevertheless upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee any property or moneys then held by such predecessor Trustee upon the trusts herein expressed.

SECTION 10.02. Any successor Trustee, however appointed, shall be a bank or trust company duly authorized to conduct a trust business and having a combined capital and surplus of at least Twenty-five Million Dollars (\$25,000,000).

SECTION 10.03. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the business of the Trustee may be transferred, shall, subject to the terms of Section 10.02, be the Trustee under this Trust Agreement without further act.

ARTICLE XI

SUPPLEMENTS, FURTHER ASSURANCES AND AMENDMENTS TO
THIS TRUST AGREEMENT AND OTHER DOCUMENTS

SECTION 11.01. At any time and from time to time, upon the written request of a Majority in Interest of Participants, (i) the Trustee shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of this Trust Agreement as specified in such request, provided that the Trustor shall also execute the same, (ii) Trustee shall execute and deliver such further documents and statements and do or cause to be done such further acts or things as may be specified in such request to perfect, protect or continue the lien and priority of any security interests created pursuant hereto, to effect the transactions contemplated hereby or to vest or confirm any right or remedy herein granted, and (iii) the Trustee shall enter into such written amendment of or supplement to the Lease, the Assignment or the Purchase Order as Lessee or the Builder, as the case may be, may agree to and as may be specified in such request, or execute and deliver such written waiver or modification of the terms of the Lease, the Assignment or the Purchase Order as may be specified in such request; provided, however, that, without the consent of the Trustor and each holder of a Certificate then outstanding no such supplement to this Agreement or amendment of or supplement to the Lease, the Assignment or the Purchase Order, or waiver or modification of the terms of any thereof, shall (a) modify any of the provisions of this Section or of Sections 6.01 or 6.02 or the definition of Majority in Interest of Participants, (b) reduce the amount or extend the time of payment of any amount owing under any Certificate or alter or modify the provisions of Article V hereof with respect to the order of priorities in which distributions thereunder shall be made as between the holders of Certificates and the Trustor, (c) reduce, modify or amend any indemnities in favor of the Participants (except that the indemnities contained in Section 10(b) of the Lease may be modified with the consent of the Trustor only), (d) change the amount or change the time of payment of the rent or the Casualty Value of any Item of Equipment as set forth in the Lease, or (e)

modify, amend or supplement the Lease or consent to any assignment of the Lease, in either case releasing Lessee from its obligations in respect of the payment of the rent or the Casualty Value for any Item of Equipment or changing the absolute and unconditional character of the obligations of Lessee as set forth in Section 1 of the Lease.

SECTION 11.02. If in the opinion of the Trustee any document required to be executed pursuant to the terms of Section 11.01 affects any immunity or indemnity in favor of the Trustee under this Trust Agreement or the Lease, the Trustee may in its discretion decline to execute such document.

SECTION 11.03. It shall not be necessary for a written request of the holders of Certificates or the Trustor furnished pursuant to Section 11.01 to specify the particular form of the proposed document to be executed pursuant to said Section, but it shall be sufficient if such request shall indicate the substance thereof.

SECTION 11.04. Promptly after the execution by the Trustee of any document entered into pursuant to Section 11.01, the Trustee shall mail, by certified mail, postage prepaid, a conformed copy thereof to the Trustor and each holder of a Certificate at its address last known to the Trustee, but the failure of the Trustee to mail such conformed copies shall not impair or affect the validity of such document.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Except as expressly herein provided, this Trust Agreement and the trusts created hereby shall terminate and this Trust Agreement shall be of no further force or effect upon the sale or other final disposition by the Trustee of all of the Equipment at any time part of the Trust Estate and the final distribution by the Trustee of all monies and other property or proceeds constituting part of the Trust Estate in accordance with the terms hereof, provided that at such time Lessee shall have fully complied with all of the terms of the Lease and the Finance Agreement; otherwise this

Trust Agreement and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof.

SECTION 12.02. Neither the Trustor nor any holder of a Certificate shall have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any Certificate or other right, title and interest of any holder of a Certificate in and to the Trust Estate or hereunder shall operate to terminate this Trust Agreement or the trusts hereunder or entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

SECTION 12.03. Any sale or other conveyance of any Item of Equipment by the Trustee made pursuant to the terms of this Trust Agreement or of the Lease shall bind the Trustor and the holders of the Certificates and shall be effective to transfer or convey all right, title and interest of the Trustee, the Trustor and such holders in and to such Item of Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Trustee.

SECTION 12.04. Nothing in this Trust Agreement, whether express or implied, shall be construed to give to any person other than the Trustee, the Trustor and the holders of the Certificates any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any Certificate; but this Trust Agreement and the Certificates shall be held to be for the sole and exclusive benefit of the Trustee, the Trustor and the holders of the Certificates.

SECTION 12.05. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing, mailed by certified mail, postage prepaid, and (i) if to the Trustee, addressed to it at its corporate trust department at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, Attention: Corporate Trust Department, and (ii) if to the Trustor or any holder of a Certificate, addressed to it at the address set forth in the Lease or as it shall have furnished in writing to the Trustee. Whenever any notice in writing is required to be given by the Trustee, the Trustor or any holder of a

Certificate to any of the other of them, such notice shall be deemed given and such requirement satisfied if such notice is mailed in compliance with the terms of this Section.

SECTION 12.06. Any provision of this Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 12.07. No term or provision of this Trust Agreement or any Certificate may be changed, waived, discharged or terminated orally, but, except as provided in Section 11.01, only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof or of any Certificate shall be effective only in the specific instance and for the specific purpose given.

SECTION 12.08. This Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 12.09. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and its successors and assigns and the Trustor and its successors and, subject to Article IX, its assigns. Any request, notice, direction, consent, waiver or other instrument or action by any holder of a Certificate shall bind the successors and assigns of such holder.

SECTION 12.10. The headings of the various Articles herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 12.11. This Trust Agreement shall in all respects be governed by, and construed in accordance with, the laws of the

Commonwealth of Pennsylvania, including all matters of construction, validity and performance; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

ATTEST:

Rene E. Petette
ASST. Secretary

HELEASCO TWO, INC.

By: *Donald W. Turner*
Donald W. Turner
President

TRUSTOR

ATTEST:

[Signature]
ASST Secretary

THE FIDELITY BANK

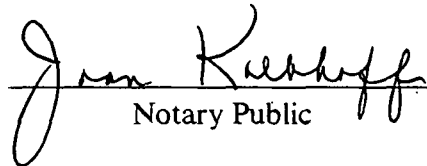
By: *[Signature]*
Vice President

TRUSTEE

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

} ss.:

On this 1st ^{August} day of ~~July~~, 1978, before me personally appeared Donald W. Turner, to me personally known, who, being by me duly sworn, says that he is the President of Heleasco Two, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

My Commission Expires:

JOAN KOLBHOFF

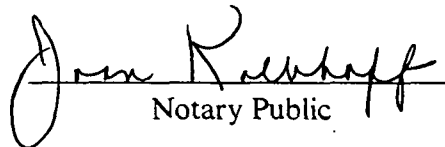
Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires February 11, 1980

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

} ss.:

On this 1st ^{August} day of ~~July~~, 1978, before me personally appeared J. Mc DONALD, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Fidelity Bank, that the seal affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said banking corporation.


Notary Public

My Commission Expires:

JOAN KOLBHOFF, 19

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires February 11, 1980

EXHIBIT I

PURCHASE ORDER ASSIGNMENT

Dated as of July 18, 1978

By

CONSOLIDATED RAIL CORPORATION

To

THE FIDELITY BANK,
As Trustee

and

CONSENT AND AGREEMENT

Dated as of July 18, 1978

By

PORTEC, INC.

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on August ____, 1978, at ____ A.M.,
Recordation No. _____.

THIS PURCHASE ORDER ASSIGNMENT, dated as of July 18, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Assignor"), and THE FIDELITY BANK, as trustee (the "Assignee") under that certain Equipment Trust Agreement dated as of the date hereof (the "Trust Agreement"), between the Trustor as defined therein and the Assignee.

WITNESSETH:

WHEREAS, the Assignor has entered into a Purchase Agreement dated as of February 28, 1978 with Portec, Inc. (the "Builder"), providing for the manufacture by the Builder and sale to the Assignor of 227 Tri-level Enclosed Auto Racks (the "Equipment" or an "Item of Equipment") (said Purchase Order as so accepted and as amended, modified or supplemented to the date hereof and as the same may, as hereinafter provided, be amended, modified or supplemented, being herein collectively called the "Purchase Order"); and

WHEREAS, the Assignee wishes to acquire the Equipment and the Assignor is willing to assign to the Assignee, on the terms and conditions hereinafter set forth, the Assignor's rights and interests under the Purchase Order and the Assignee is willing to accept such assignment, as hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. The Assignor has sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over unto the Assignee all the Assignor's right, title and interest in and to the Purchase Order, as and to the extent that the same relates to any Item of Equipment and the purchase and operation thereof, including without limitation in such assignment, (a) the right upon valid tender by the Builder to purchase each Item of Equipment pursuant to the Purchase Order, and the right to take title to such Item of Equipment and to be named

the purchaser in the bill of sale to be delivered by the Builder for such Item of Equipment, (b) all claims for damages in respect of each Item of Equipment, arising as a result of any default by the Builder under the Purchase Order, including, without limitation, all warranty and indemnity provisions contained in the Purchase Order, and all claims arising thereunder, in respect to each Item of Equipment, and (c) any and all rights of the Assignor to compel performance of the terms of the Purchase Order; subject, however, to the rights of the Assignor to pursue such claims in its own name as provided in that certain Lease of Railroad Equipment dated as of the date hereof between the Assignee, as lessor, and the Assignor, as lessee (the "Lease").

2. This Assignment shall become effective with respect to each Item of Equipment upon, but not prior to, the acceptance by the Assignee of the delivery of such Item of Equipment pursuant to the Purchase Order.

3. The Assignor agrees that, notwithstanding this Assignment, the Builder's consent hereto or the exercise by the Assignee of any right assigned hereunder, the Assignor shall, in the event that Assignee does not make payment or cause such payment to be made as required by this Assignment, remain obligated and liable to the Builder under the Purchase Order as if this Assignment had not been executed.

4. The Assignor and the Builder, by its consent hereto, agree that the Assignee shall not have any obligation or liability to the Builder under the Purchase Order by reason of or arising out of this Assignment or be obligated to perform any of the obligations or duties of the Assignor thereunder, except to pay the purchase price for the Equipment as and when delivered and accepted. In the event that the Assignee does not pay the Purchase Price for the Equipment as and when required by the Purchase Order, this Assignment, the Trust Agreement and the Finance Agreement (as defined in the Trust Agreement) all of the Assignee's right, title and interest in the Equipment shall be deemed terminated and vested in the Assignor.

5. The Assignor and the Assignee, by acceptance hereof, agree that neither this Assignment nor the Builder's consent hereto shall in any way increase the Builder's obligations or liabilities under the Purchase Order.

6. The Builder agrees, by its consent hereto, that anything herein or in the Purchase Order to the contrary notwithstanding:

(a) the Builder will not demand, and shall not be entitled to receive, payment from the Assignee or the Trust Estate, as such term is defined in the Trust Agreement, for any Item of Equipment delivered to Assignee pursuant to the Purchase Order and this Assignment except as payment is required to be made by Assignee pursuant to the Trust Agreement upon fulfillment of the conditions therein provided, but shall look solely to the Assignor for such payment; and

(b) upon execution and delivery by the Builder of the Builder's Delivery Certificate for each Item of Equipment concurrently with delivery of the Item of Equipment to the Assignee, good and marketable title to such Item of Equipment, free and clear of all liens, charges or other encumbrances, arising as a result of acts of or claims against the Builder (excepting only the rights of the parties under this Assignment, the Purchase Order, the Finance Agreement and the Lease; and the purchase money security interest retained by the Builder), shall pass to the Assignee; and

(c) upon delivery of payment to the Builder and upon execution and delivery by the Builder of the confirmatory bill of sale for each Item of Equipment to the Assignee, good and marketable title to such Item of Equipment, free and clear of all liens, charges or other encumbrances, arising as a result of acts of or claims against the Builder including any claim by the Builder against the Assignee, said Trust Estate or such Item of Equipment (excepting only the rights of the Loan Participants [as defined in the Finance Agreement] under the Finance Agreement and the rights of the Assignor under the Lease) shall pass to the Assignee.

7. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Assignment.

8. The Assignor represents and warrants that the Purchase Order is in full force and effect and is enforceable in accordance with its terms and the Assignor is not in default thereunder. The Assignor further represents and warrants that Assignor has not assigned or pledged, and agrees that it will not assign or pledge, so long as this Assignment remains in effect, the whole or any part of the rights hereby assigned, to anyone other than the Assignee.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed under seal as of the date first above written.

ATTEST:

CONSOLIDATED RAIL
CORPORATION
Assignor

_____ By: _____

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this _____ day of July, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of Consolidated Rail Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

ACCEPTANCE

The foregoing Assignment is hereby accepted and agreed to as of July 18, 1978.

ATTEST:

THE FIDELITY BANK,
as Trustee
Assignee

By: _____
Vice President

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this _____ day of July, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Fidelity Bank, that the seal affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said banking corporation.

Notary Public

My Commission Expires:

CONSENT AND AGREEMENT

1. The undersigned, PORTEC, INC. (the "Builder"), intending to be legally bound hereby, acknowledges receipt of an executed counterpart or a conformed copy of the Purchase Order Assignment ("Assignment") to which this Consent and Agreement is annexed.

2. The Builder consents to the Assignment subject to the conditions and agreements set forth therein, including, without limitation, the Builder's agreements in paragraph 6 thereof.

3. The Builder agrees that all of its warranties made pursuant to the Purchase Order with respect to the Equipment, both referred to in the Assignment, are made to the Assignee as well as to the Assignor.

IN WITNESS WHEREOF, the Builder has caused this Consent and Agreement to be duly executed under seal as of July 18, 1978.

ATTEST:

PORTEC, INC.

_____ By: _____

STATE OF ILLINOIS }
COUNTY OF _____ } ss.:

On this _____ day of July, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of Portec, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the

foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

CERTIFICATE OF DELIVERY

CONSOLIDATED RAIL CORPORATION ("ConRail") hereby certifies that:

(A) The tri-level enclosed auto racks manufactured by Portec, Inc. listed below (the "Items") have been delivered to ConRail in accordance with the Lease of Railroad Equipment (the "Lease"), dated as of July 18, 1978, by and between ConRail and THE FIDELITY BANK, as trustee (the "Lessor") and inspected and accepted at Novi, Michigan, by ConRail on behalf of the Lessor pursuant to the Lease on the date hereof;

(B) The Items are in good order and condition and conform to all applicable Department of Transportation and Interstate Commerce Commission requirements and specifications, all standards recommended by the Association of American Railroads and all requirements of the Purchase Order referred to in the Lease;

(C) The Items have been plainly, distinctly, permanently and conspicuously marked on each side, in letters not less than one inch in height, with the legend:

"AUTO RACK OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT AND ARTICLE 9 OF THE PENNSYLVANIA UNIFORM COMMERCIAL CODE AND LEASED UNDER A LEASE DEPOSITED UNDER SECTION 86 OF THE RAILWAY ACT OF CANADA."

(D) The Items are subject to the terms and conditions of the Lease and all waivers as to such Items required by Section 8 of the Lease have been obtained and copies delivered as required therein.

The Items to which this certificate pertains are:

<i>Serial No.</i>	<i>Identifying No.</i>	<i>Car Road No.</i>
-------------------	------------------------	---------------------

Dated at Novi, Michigan, this _____ day of _____, 1978.

CONSOLIDATED RAIL
CORPORATION
Lessee

By: _____

BUILDER'S DELIVERY CERTIFICATE

PORTEC, INC. ("Builder") hereby certifies that:

(A) The tri-level enclosed auto racks listed below (the "Items") have been delivered at Novi, Michigan, to Consolidated Rail Corporation ("ConRail") as agent for THE FIDELITY BANK, as Trustee, under an Equipment Trust Agreement dated as of July 18, 1978, in accordance with the Purchase Agreement dated as of February 28, 1978, by and between Builder and ConRail (the "Purchase Order") as assigned to Trustee pursuant to the Purchase Order Assignment dated as of July 18, 1978 between ConRail and Trustee;

(B) The Items are in good order and condition and conform to all applicable Department of Transportation and Interstate Commerce Commission requirements and specifications, all standards recommended by the Association of American Railroads and all requirements of the Purchase Order;

(C) Such Items have been plainly, distinctly, permanently and conspicuously marked on each side, in letters not less than one inch in height, with the legend:

"AUTO RACK OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT AND ARTICLE 9 OF THE PENNSYLVANIA UNIFORM COMMERCIAL CODE AND LEASED UNDER A LEASE DEPOSITED UNDER SECTION 86 OF THE RAILWAY ACT OF CANADA."

(D) Identifying numbers have been attached or affixed to the Items. Such legend and identifying numbers were attached before such Items were assembled or affixed to a flat bed car or as soon thereafter as possible; but, in all events, prior to execution of this Certificate.

The Builder represents and warrants to the Loan Participants, the Trustor and the Trustee (as those terms are defined in the Lease of Railroad Equipment dated as of July 18, 1978 (the "Lease")),

between ConRail and THE FIDELITY BANK, as trustee, and ConRail that the Builder is engaged in the business of manufacturing and selling auto racks and other goods of the same kind as the Items that at the time of delivery of the Items, the Items were newly manufactured and were not used, that it had legal title to the Items and good and lawful right to sell the Items in the ordinary course of its business and that the Trustee received good and marketable title to the Items free of all claims, liens, security interests and other encumbrances of any nature, excepting only the rights of the parties under the Purchase Order, Purchase Order Assignment and the Finance Agreement (as defined in the Lease) and the rights of ConRail under the Lease, and the purchase money security interest retained by the Builder.

The Items to which this certificate pertains are:

<i>Serial No.</i>	<i>Identifying No.</i>	<i>Car Raod No.</i>
-------------------	------------------------	---------------------

Dated at Novi, Michigan, this _____ day of _____, 1978.

PORTEC, INC.
Builder

By: _____

LEASE OF RAILROAD EQUIPMENT

Dated as of July 18, 1978

between

THE FIDELITY BANK, as Trustee

Lessor

and

CONSOLIDATED RAIL CORPORATION

Lessee

227 Tri-level Enclosed
Auto Racks

See Section 9 for Lessor's Disclaimer of Warranties

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on August ____, 1978, at ____ A.M.,
Recordation No. _____.

INDEX TO LEASE OF RAILROAD EQUIPMENT

	PAGE
SECTION 1. Net Lease	2
SECTION 2. Delivery and Acceptance of Equipment	3
SECTION 3. Rentals	4
SECTION 4. Term of Lease	5
SECTION 5. Identification Marks	6
SECTION 6. Taxes	7
SECTION 7. Maintenance; Casualty Occurrences; Insurance	9
SECTION 8. Waivers; Reports	12
SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules	14
SECTION 10. Indemnification	16
(a) General	16
(b) Indemnity for Failure to Obtain Deprecia- tion Deduction, Investment Tax Credit, or Interest Deduction	19
(c) Survival of Obligations of the Lessee	23
(d) Limitation on Indemnity	23
SECTION 11. Default; Remedies	23
SECTION 12. Return of Equipment	29
SECTION 13. Assignment; Possession and Use	31
SECTION 14. Renewal and Purchase Option	33
SECTION 15. Recording	36
SECTION 16. Interest on Overdue Rentals	36
SECTION 17. Notices	37
SECTION 18. Severability; Effect and Modification of Lease	37
SECTION 19. No Recourse	38
SECTION 20. Agreements for Benefit of Trustor	38
SECTION 21. Execution	38
SECTION 22. Governing Law	38
SECTION 23. Obligation of Lessor Under the Trust Agree- ment and/or the Finance Agreement; Addi- tional Rentals	39
SECTION 24. Lessor's Right to Perform for the Lessee	39
SECTION 25. Immunities; Satisfaction of Undertakings	39
SCHEDULE A — Description of Equipment and Lessee's Iden- tifying Numbers	42
SCHEDULE B — Casualty Values	43

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT dated as of July 18, 1978 (hereinafter called the Lease), between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the Lessee), and THE FIDELITY BANK, as Trustee (hereinafter called the Lessor) under an Equipment Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HELEASCO TWO, INC. (hereinafter called the Trustor).

WHEREAS, the Lessee has entered into a Purchase Agreement dated as of February 28, 1978 (hereinafter called the Purchase Order) with Portec, Inc. (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee the items of railroad equipment described in Schedule A hereto, which will consist of tri-level enclosed auto racks (hereinafter called the Equipment, an Item of Equipment, or an Item);

WHEREAS, the Lessee is assigning to the Lessor its interests in the Purchase Order pursuant to a Purchase Order Assignment dated as of the date hereof (hereinafter called the Assignment), and the Builder is consenting to the Assignment;

WHEREAS, the Lessee desires to lease such Items of Equipment as are delivered and accepted and settled for under the Purchase Order and the Assignment, at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, pursuant to a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) loans made by Provident National Bank and The Union National Bank of Pittsburgh (hereinafter collectively called the Loan Participants) are to be evidenced by Interim Equipment Trust Certificates and Equipment Trust Certificates issued under the Trust Agreement, secured by a security interest in the Equipment and payable from amounts paid by Lessee hereunder; and certain terms used herein are defined in the Finance Agreement and the Trust Agreement and shall have the meanings set forth therein unless otherwise defined herein;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions:

1. *Net Lease.* This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and the Lessee shall not be entitled to any abatement of rent, reduction thereof, setoff or counterclaim against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Trustor under this Lease, the Finance Agreement, the Purchase Order, or the Assignment, or against the Builder or the Loan Participants or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Equipment, the prohibition of or other restriction against the Lessee's use of all or any of the Equipment, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Trustor or the Builder for any reason whatsoever.

2. Delivery and Acceptance of Equipment.

(a) The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Equipment pursuant to the Assignment, and the Lessee agrees to inspect the Equipment during construction of the Equipment, with the intention that the Equipment should be of as high a quality as if the Lessee were itself purchasing the Equipment for its permanent use. The Lessor retains the right, but shall not have the obligation, to make its own inspection of the Equipment during construction or upon delivery, in addition to inspections performed hereunder by the Lessee. The Equipment will be delivered to the Lessee, subject to the conditions herein, in the Finance Agreement, in the Assignment and in the Purchase Order, at the point or points within the United States designated in the Purchase Order (the date of delivery of each Item of Equipment being hereinafter called the Delivery Date with respect thereto). Upon delivery, the Lessee will cause an employee of the Lessee to inspect each Item of Equipment, and if such Item of Equipment is found to be in accordance with the Specifications (as defined in the Purchase Order), to accept delivery of such Item of Equipment and execute and deliver to the Lessor a certificate of delivery (hereinafter called the Certificate of Delivery) in accordance with the Finance Agreement and the Assignment, stating that such Item of Equipment has been inspected and accepted by the Lessee on behalf of the Lessor on the date of such Certificate of Delivery and is marked in accordance with Section 5 hereof; whereupon (subject to paragraph (b) of this Section) such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

(b) The Lessee will not accept the delivery of any Item of Equipment on any Delivery Date if:

(1) the documents, certificates and opinions required to be delivered pursuant to Section 3 of the Finance Agreement prior to or on the initial Delivery Date, shall not have been delivered as stated therein; or

(2) any other document, certificate or opinion required to be delivered as a condition precedent to the Participants' obligations pursuant to the provisions of the Finance Agreement prior to, or on and with respect to any Closing Date shall not have been delivered as stated therein; or

(3) an Event of Default (as hereinafter defined) or other event which after notice or lapse of time or both would become an Event of Default has occurred and be continuing; or

(4) the Purchase Price (as such term is defined in the Trust Agreement) of such Item of Equipment together with the aggregate Purchase Price of all Items of Equipment previously accepted exceeds the sum of the Aggregate Loan Participants' Commitment and the Trustor's Commitment (as such terms are defined in the Trust Agreement).

In no event will the Lessee accept deliveries after October 26, 1978. Upon delivery and acceptance of the final Item of Equipment to be leased hereunder, or October 26, 1978 (whichever first occurs), the Lessee shall provide written notice to the Lessor designating the first day of the calendar month next succeeding the date of such notice as the Final Closing Date.

3. *Rentals.* The Lessee agrees to pay the Lessor, as rental with respect to each Item of Equipment delivered and accepted pursuant to Section 2 hereof (i) for the period from the Closing Date with respect thereto through the last day of the Interim Lease Term (as defined in Section 4 hereof) an amount equal to .0275% of the aggregate of the Purchase Price with respect to each Item of Equipment for each day during such period, and (ii) for the Lease Term (as defined in Section 4 hereof) one hundred twenty (120) consecutive payments, each of which shall be in an amount equal to 1.076441% of the aggregate Purchase Price for each Item accepted under this Lease.

The rentals due for the Interim Lease Term shall be paid, in arrears, on the first day of the Lease Term. The rentals due for the Lease Term shall be paid, in advance, on the first day of the month for each calendar month during the Lease Term.

During any extension of this Lease pursuant to Section 14 hereof, the rentals during such extension shall be payable as provided in Section 14.

If any of the rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessee shall pay all rental and other payments required to be paid by the Lessee to the Lessor hereunder promptly to the Lessor in Federal or other funds immediately available at the Corporate Trust Department of Lessor and to the account specified on the signature page hereof or such other place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this Section in Federal or other funds immediately available to the Lessor by 11:00 a.m., local time, on the date when and in the city where such payment is due.

4. *Term of Lease.* The term of this Lease as to each Item of Equipment shall consist of (i) the period from the date of delivery and acceptance of such Item of Equipment to, but not including, the Final Closing Date (the Interim Lease Term) and (ii) a period of one hundred twenty (120) months commencing on the Final Closing Date (the Lease Term) and, subject to the provisions of Sections 7, 11 and 14 hereof, shall terminate on the last day of the one hundred twentieth (120th) month thereafter. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9, 10 and 12 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Equipment are subject to the provisions of the Trust Agreement; provided, however, if the Lessee is not in default hereunder this Lease may not be terminated and the Lessee shall be entitled to its rights of assignment, possession and use under Section 13 hereof.

5. *Identification Marks.* The Lessee will cause at its expense each Item of Equipment to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Item of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Item of Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item of Equipment, in letters not less than one inch in height, the words "AUTO RACK OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT AND ARTICLE 9 OF THE PENNSYLVANIA UNIFORM COMMERCIAL CODE AND LEASED UNDER A LEASE DEPOSITED UNDER SECTION 86 OF THE RAILWAY ACT OF CANADA", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title and the Loan Participants' security interest in such Item of Equipment and the rights of the Lessor under this Lease and the rights of the Loan Participants under the Trust Agreement. The words and identifying number shall be affixed to each Item before it is assembled on or attached to a flatbed car or as soon thereafter as possible; but, in all events, prior to delivery pursuant to Section 2 hereof. The Lessee will not place any Item of Equipment in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Loan Participants and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Finance Agreement shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Loan Participants and the Lessor an opinion of counsel to such effect. The Item of Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or similar type as the Equipment for convenience of identification of its right to use the Equipment as permitted by this Lease.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership.

6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustor for collection or other charges and will be free of expense to the Lessor and the Trustor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor or the Trustor in consequence of the receipt of payments provided for herein and other than state or local taxes measured by net income or value added, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Finance Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Item of Equipment or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Item of Equipment; that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith, with due diligence, and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Loan Participants under the Trust Agreement and/or the Finance Agreement. If the Lessee is prohibited from contesting such im-

sition in its own name, the Lessor and/or the Trustor (as may be required) shall, upon written request from the Lessee, contest such imposition; provided, however, that such contest shall be at the Lessee's sole expense and the Lessee shall indemnify and hold the Lessor and/or the Trustor harmless from and against any and all costs and expenses incurred by the Lessor and/or the Trustor in connection therewith. The Lessee agrees to give the Lessor notice of such contest within thirty (30) days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor or the Trustor directly and paid by the Lessor or the Trustor, the Lessee shall reimburse the Lessor or the Trustor on presentation of an invoice therefor, with interest at a rate equal to the lesser of twelve and one-half (12½) percent per annum or the maximum rate permitted by applicable law, for the period between payment of the imposition by the Lessor or the Trustor and reimbursement.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all returns, statements and reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Equipment, the security interest of the Loan Participants in the Equipment or the leasing thereof to the Lessee. The Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Loan Participants in the Equipment, as the case may be.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this Section, the

Lessor hereby authorizes the Lessee to act in the Lessor's name and on the Lessor's behalf; and the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this Section. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor or the Trustor's compliance with the requirements of taxing jurisdictions.

7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Item of Equipment which is subject to this Lease in good operating order, repair and condition, normal wear and tear excepted.

In the event that any Item of Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, seized or attached by a judgment creditor of the Lessee, or rendered permanently unfit or unavailable for use from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Item of Equipment in the manner set forth in Section 12 hereof, the Lessee shall promptly and fully inform the Lessor and the Loan Participants with respect to any such occurrence including the requisition for use by the United States government. On the rental payment date with respect to such Item of Equipment next succeeding such Casualty Occurrence, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Item of Equipment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Item of Equipment determined as of the date of

such rental payment date in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is due, the rental for such Item of Equipment shall cease to accrue, the term of this Lease as to such Item of Equipment shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Item of Equipment) the Lessor shall be entitled to recover possession of such Item of Equipment. Any Casualty Value not paid when due shall accrue interest as provided in Section 16 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Item of Equipment or any component thereof suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis without recourse to, or representation or warranty by, the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale or condemnation award to the extent they do not exceed the Casualty Value of such Item of Equipment, and shall pay any excess to the Lessor.

The Casualty Value of each Item of Equipment as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Item of Equipment as is set forth in Schedule B attached hereto (which Schedule B is subject to revision on each Closing Date as required to reflect any adjustments in the Purchase Price of the Equipment and the percentage factors) opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is a casualty after the Lease has terminated but before the Item of Equipment shall have been returned in the manner provided in Section 12 hereof, the rental payment date immediately preceding the date of loss.

Whenever any Item of Equipment shall suffer a Casualty Occurrence after termination of this Lease and before such Item of Equipment shall have been returned in the manner provided in Section 12 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Item of Equipment. Upon the making of any such payment by the Lessee in respect of any Item of Equipment (except in the case of the loss, theft or complete destruction of such Item of Equipment), the Lessor shall be entitled to recover posses-

sion of such Item of Equipment, and the Lessor appoints the Lessee its agent to dispose of such Item of Equipment or any component thereof, at the best price obtainable on an "as is, where is" basis without recourse to, or representation or warranty from, the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of any sale or condemnation award to the extent they do not exceed the Casualty Value of such Item of Equipment and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States government or other governmental authority (hereinafter called the Government) of any Item of Equipment during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Item of Equipment shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the Government for the use of such Item of Equipment during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Item of Equipment after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove provided in this Section, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Item of Equipment from and after delivery and acceptance thereof by the Lessee hereunder until such Item of Equipment shall have been returned in the manner provided in Section 12 hereof.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained all-risk property damage insurance in respect of the Equipment at the time subject hereto, and public liability insurance, at least in amounts and against risks customarily insured against by comparable Class I railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it. Such public liability insurance shall be, at

the time of execution of this Lease, a policy containing not more than a \$2,000,000 deductible and insuring against loss of up to \$50,000,000 per occurrence. Any policies of public liability insurance or property damage insurance carried in accordance with this paragraph shall (i) name the Lessor and the Trustor and the Loan Participants as additional named insureds as to liability insurance or loss payees as to property damage insurance as the case may be, as their respective interests may appear, (ii) require thirty (30) days' prior written notice of material change, cancellation or the removal of the Lessor or the Trustor or the Loan Participants as named insureds as the case may be, to the Lessor, the Trustor and the Loan Participants, and (iii) shall provide that in respect of the interests of the Lessor, the Trustor and the Loan Participants in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor, the Trustor or the Loan Participants) and shall insure the Lessor, the Trustor and the Loan Participants regardless of any breach or violation of any warranty, declaration, or condition contained in such policies by the Lessee or any other person (other than the Lessor, the Trustor or the Loan Participants).

Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore delivered pursuant hereto, the Lessee shall deliver to the Lessor, the Loan Participants and the Trustor a certificate of insurance issued by an authorized representative of the insurers for the insurance maintained pursuant to this Section; provided, however, that if the delivery of a formal certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

8. *Waivers; Reports.* Lessee intends to use the Items of Equipment by attaching them to railroad flat cars which are owned or leased by Lessee. Lessee agrees that each railroad car to which an Item of Equipment is attached shall be either owned by Lessee or leased by Lessee for a period at least equal to the term of this Lease subject to the right of the lessor with respect thereto to terminate any such lease upon 12 months prior written notice. Lessee will immediately upon receipt send copies of such notice of termination to Lessor and Participants. In the event of any such termination, Lessee will cause such Items of Equipment to be reattached to other

railroad cars so that use of the same continues uninterrupted. Lessee agrees that, within 9 months of the date of any such notice of termination, such reattachment shall have been completed and Lessor and the Participants notified of the applicable identifying numbers, and that the failure to do so shall be deemed to be an Event of Default hereunder. Lessee agrees to cause the owner of, any lessor of, and any holder of any security interest in any railroad car to which any Item of Equipment is attached to waive any right of ownership or security interest in the Item of Equipment attached to such railroad car. On or prior to the Delivery Date for any Item, the Lessee shall advise the Lessor and the Participants of the identifying number, owner, and if applicable, lessor of or holder of any security interest in the railroad car to which such Item is to be attached, and shall deliver together therewith evidence of such of the foregoing waivers as may be applicable in form and substance satisfactory to Lessor and Participants. Any changes in such information, including but not limited to any change of identifying number, shall be communicated promptly to the Lessor and the Participants and additional waivers, if applicable, shall be delivered to the Lessor and the Participants.

On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor, the Loan Participants and the Trustor, an accurate statement (a) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Equipment then leased hereunder or covered by the Finance Agreement, the amount, description and identifying numbers of all Equipment that has suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Lessor or the Loan Participants may reasonably request and (b) stating that, in the case of all Equipment repainted or repaired during the period covered by such statement, the identifying numbers and markings required by Section 5 hereof have been preserved or replaced. The Trustor, Lessor or the Loan Participants, at their sole cost and expense, shall have the right by their agents, to inspect the Equipment and the Lessee's records with respect thereto

at such reasonable times as the Lessor or the Loan Participants may request during the continuance of this Lease.

9. *Disclaimer of Warranties; Compliance with Laws and Rules.* NEITHER THE LESSOR NOR THE TRUSTOR MAKE, HAVE MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR NOR THE TRUSTOR MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM (EITHER UPON DELIVERY THEREOF TO THE LESSOR OR OTHERWISE), INTERFERENCE BY ANY PARTY OTHER THAN THE LESSOR OR THE TRUSTOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE TRUSTOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of the Assignment and the Builder's Consent and the patent infringement and indemnification provisions of the Purchase Order; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. THE LESSOR AND THE TRUSTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO THE LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT OR BY

ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THEREWITH; (ii) THE USE, OPERATION OR PERFORMANCE OF ANY ITEM OF EQUIPMENT OR ANY RISKS RELATING THERETO; (iii) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES; OR (iv) THE DELIVERY, OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF ANY EQUIPMENT. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that the Equipment described therein is satisfactory to the Lessee in their design, condition, material, workmanship, use, operation and performance, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on the character or use of the Equipment delivered.

The Lessee agrees, for the benefit of the Lessor and the Loan Participants to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Item of Equipment) with all applicable laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that, prior to the expiration of the Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Item of Equipment, the Lessee will conform therewith at its own expense and the Lessor will have title thereto. Notwithstanding the preceding sentence, the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of counsel to the Lessor or the Loan Participants, adversely affect the property or rights of the Lessor or the Loan Participants under this Lease, the Purchase Order, the Finance Agreement, the Trust Agreement or the Assignment.

Except as set forth in the first paragraph of Section 7 hereof and the second paragraph of this Section, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Equipment during the term of this Lease as are readily removable without causing material damage to the Equipment (and do not adversely and materially affect the value of the Equipment). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Equipment pursuant to Section 12, except to the extent such additions, modifications or improvements are subject to the next paragraph hereof.

Any and all parts installed on and additions and replacements made to any Item of Equipment (i) which are not readily removable without causing material damage to such Item of Equipment, or (ii) which were made in the course of ordinary maintenance of the Equipment or (iii) which are required for the operation or use of such Item of Equipment by the interchange rules of the Association of American Railroads and of the Interstate Commerce Commission, or by any lawful rule of the Department of Transportation or other applicable regulatory body, shall constitute accessions to such Item of Equipment and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Trust Agreement) shall immediately be vested in the Lessor. At its option the Lessor may require the Lessee to remove any or all such parts, additions or replacements at the time the Equipment is returned to the Lessor pursuant to the provisions of Section 12 hereof.

10. *Indemnification.*

(a) General. Except as otherwise specifically provided in this Lease, the Lessee shall pay, and shall protect, indemnify and hold the Lessor (including for purposes of this Section The Fidelity Bank in its personal capacity), the Trustor, the Loan Participants and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may

be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Item of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's obligations under the Finance Agreement, the Trust Agreement or the Assignment. The Lessee shall be obligated under this Section, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and,

in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 10(a), the Lessee shall pay such Indemnified Person an amount which, after reduction by reason of all taxes required to be paid by such Indemnified Person, as the case may be, in respect to the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect to the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; however, the failure to give any such notice shall not relieve the Lessee of its obligation under this Section. Upon the payment in full by the Lessee of any indemnities as contained in this Section 10(a), and provided that no Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 10(a) shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The indemnities contained in this Section 10(a) shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. Any indemnity payment pursuant to this Section 10(a) shall be made directly to the Indemnified Person. None of the indemnities in this Section 10(a) shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under

any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

(b) Indemnity for Failure to Obtain Depreciation Deduction, Investment Tax Credit, or Interest Deduction. This Lease has been entered into based on the understanding that the Lessor and the Trustor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), to an owner of property, including (without limitation) an allowance for (a) the maximum depreciation deduction authorized with respect to the Equipment pursuant to an accelerated depreciation method with respect to new equipment under Section 167 of the Code, depreciated to a ten (10) percent salvage value over a ten (10) year life (the "Depreciation Deduction"); (b) the maximum investment tax credit provided for in Sections 38 and 46 through 50 of the Code with respect to the Equipment (the "Investment Tax Credit"); and (c) the deduction in each taxable year of the Trustor and the Lessor for all interest paid or accrued during such year on the indebtedness evidenced by the Certificates, computed in accordance with Section 163 of the Code (the "Interest Deduction"). It is understood and agreed that this Section is for the ultimate benefit of the Trustor, and that the Lessor as Trustee under the grantor trust, as well as the Trustor, is vested with the right, power and authority to enforce this Section 10(b).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor or the Trustor such records as will enable the Lessor or the Trustor to determine whether it is entitled to the full benefit of the Depreciation Deduction and the Investment Tax Credit with respect to the Equipment, and the Interest Deduction.

Except as the result of the occurrence of any one or more of the following events: (i) a disqualifying disposition due to sale of any

Item of the Equipment or this Lease by Lessor prior to any Default by Lessee; or (ii) the failure of the Lessor and/or the Trustor to timely and properly claim Investment Tax Credit or Depreciation Deduction or Interest Deduction in the tax return of the Lessor and/or the Trustor (or the consolidated federal tax payer group of which the Trustor is a part); or (iii) the failure of the Lessor and/or the Trustor to have sufficient liability for federal income taxes against which to credit such Investment Tax Credit or sufficient taxable income before deduction of depreciation with respect to the Equipment to offset the full amount of any such Depreciation Deduction or Interest Deduction; or (iv) any event which by the terms of this Lease require payment by the Lessee of the Casualty Value, if such Casualty Value is thereafter actually paid by the Lessee to the Lessor, to the extent that such payment reimburses the Lessor for amounts otherwise payable by Lessee hereunder,

if the Lessor and/or the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed or recaptured all or any portion of (a) the Depreciation Deduction with respect to one hundred (100) percent of the Purchase Price of the Equipment, using initially the double declining balance method and thereafter the sum of the years' digits method, or (b) the Investment Tax Credit, or (c) the Interest Deduction, for any period prior to the termination of this Lease, then Lessee shall pay to the Trustor or the Lessor as additional rent an amount which, after deduction of all taxes required to be paid by the Trustor or the Lessor in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States of America, shall be equal to such sums as, in the reasonable opinion of the Trustor or the Lessor, and to the reasonable satisfaction of the Lessee, will cause the Trustor's or Lessor's net return to be equal to, but no greater than, the net return that would have been available to the Trustor or the Lessor if it had been entitled to the utilization of all of the Depreciation Deduction and/or the Investment Tax Credit and/or the Interest Deduction which was lost, not available for claim, disallowed or recaptured by or from the Trustor or the Lessor, plus such sum as will pay or reimburse the Trustor or the Lessor for any interest or penalties incurred in connection with the Depreciation Deduction and/or the Investment Tax Credit and/or the Interest Deduction which is lost, not available for claim, disallowed or recap-

tured. In the event the Lessee shall have made such a payment to the Lessor, the Casualty Values set forth in Schedule B attached hereto shall be reduced by the amount, if any, included therein which represents reimbursement to the Trustor or the Lessor for the portion of such Depreciation Deduction and/or the Investment Tax Credit and/or Interest Deduction so lost or disallowed; provided that the Casualty Value shall at no time be less than the aggregate principal balance of the outstanding Certificates.

If such loss, disallowance, recapture or unavailability, as provided in the immediately preceding paragraph, shall have occurred during the term of this Lease, then at the Lessee's option evidenced by written notice to the Lessor, either (i) the Lessee shall pay to the Lessor, in a lump sum, an amount sufficient to indemnify the Lessor against such loss in the amount determined hereinabove, or (ii) the Lessor and the Lessee shall in good faith attempt to agree upon (x) a mutually satisfactory increase in the rental payments to be paid on each then remaining rental payment date hereunder sufficient to indemnify the Lessor against such loss in the amount determined hereinabove, and (y) an appropriate adjustment to the Casualty Values set forth in Schedule B attached hereto.

In the event a claim shall be made by the Internal Revenue Service or any state or local taxing authority which, if successful, would result in a loss of any of the tax benefits referred to in this Section 10(b) and would require the Lessee to indemnify the Trustor or the Lessor for such loss, the Trustor or the Lessor hereby agrees to take such action, for a reasonable period of time, in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time; provided, however, that (i) within thirty (30) days after notice by the Trustor or the Lessor to the Lessee of such claim, the Lessee shall request that such claim be contested; (ii) the Trustor or the Lessor, at its option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or any state or local taxing authority as the case may be, in respect of such claim and may, at its option, contest the claim in any permissible forum considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Trustor or the Lessor with an opinion of the Lessee's independent tax counsel to the effect

that a meritorious basis exists for such claim; and (iv) the Lessee shall have indemnified the Trustor or the Lessor in a manner satisfactory to it for any liability or loss which the Trustor or the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Trustor or the Lessor from time to time on demand all costs and expenses which the Trustor or the Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys', accountants' and investigatory fees and disbursements, (B) the amount of any interest or penalty which may ultimately be payable as the result of contesting such claim, and (C) in the event the Trustor or the Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Trustor or the Lessor, interest at the rate of nine (9) percent per annum on the amount of the tax paid attributable to such loss, computed from the date of payment of such tax to the date the Lessee shall reimburse the Trustor or the Lessor for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made and the Lessee shall have reasonably requested the Trustor or the Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this Section 10(b), the Lessee's liability with respect to any such loss as a consequence of such claim shall become fixed and payable upon final determination of the Trustor's or the Lessor's liability for the tax claimed and after giving effect to any refund obtained, together with interest at the rate of nine (9) percent per annum thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Trustor or the Lessor makes payment of the tax attributable to the tax benefit lost or the adjustment of the tax return of the Lessor or the Trustor (or the consolidated federal tax payer group of which the Trustor is a part) to reflect such loss, whichever occurs first. In the case of any such claim referred to above, the Trustor or the Lessor agrees promptly to notify the Lessee in writing of such claim, agrees not to make payment of such claim for at least thirty (30) days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Trustor or the Lessor, and otherwise to cooperate with the Lessee in good faith in order to effectively contest any such claim and, if and to the extent agreeable to the Trustor or the Lessor, to permit Lessee to participate in the

proceeding relating to such claim. At any time, whether before or after commencing to contest any such claim, the Lessor or the Trustor may decline to contest such claim by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor or the Trustor with respect to such claim or such portion thereof as may be specified in such notice.

(c) *Survival of Obligations of the Lessee.* The obligations of the Lessee under this Section 10 shall survive the termination of this Lease, so long as such obligations arose, whether or not assessed or otherwise finalized, during the term of this Lease.

(d) *Limitation on Indemnity.* The indemnity contained in Section 10(a) hereof shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge, or expense incurred by any Indemnified Person (1) caused by the wilful misconduct or gross negligence of such Indemnified Person, (2) resulting from acts or events with respect to any Item of Equipment which commence after possession of such Item of Equipment has been returned to the Lessor in the manner provided in Section 12 hereof, (3) caused by the material violation by such Indemnified Person of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (4) arising from the breach of any representation or warranty of such Indemnified Person set forth in Section 6 of the Finance Agreement, (5) which is related to any lien, charge, security interest or other encumbrance which the Lessee is not required by Section 13 hereof to pay or discharge, or (6) otherwise expressly stated herein or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnified Person in its personal capacity.

11. *Default; Remedies.* If, during the continuance of this Lease, one or more of the following events (each such event being herein called an Event of Default) shall occur:

A. default shall be made in payment of any amounts required to be paid by the Lessee hereunder, and such default shall continue for five (5) days;

B. the Lessee shall fail to provide and maintain insurance as required by Section 7 hereof;

C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Equipment, or any thereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Finance Agreement, or in any certificate, instrument or document provided pursuant hereto or thereto, and such default shall continue for thirty (30) days after written notice from the Lessor or the Loan Participants to the Lessee, specifying the default and demanding that the same be remedied;

E. any representation or warranty of the Lessee made herein, in the Finance Agreement, or in any certificate, instrument or document provided pursuant hereto or thereto shall prove to have been materially incorrect when made;

F. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and such petition shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or all the obligations of the Lessee, under this Lease or under the Finance Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trust or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier;

G. any other proceedings shall be commenced by or against the Lessee, for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Finance Agreement, under any bankruptcy or insol-

vency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Finance Agreement), and such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or all the obligations of the Lessee under this Lease or under the Finance Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

H. default by the Lessee in any lease obligation relating to railroad cars to which any Item of Equipment is attached and demand by the lessor with respect thereto (or any party claiming by or through such lessor) to recover possession of such railroad cars;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor (or the Trustor) would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and

thereupon may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor or its agents, (1) require the Lessee to return the Equipment, or one or more Items of the Equipment pursuant to Section 12 hereof; (2) take or cause to be taken immediate possession of the Equipment, or one or more of the Items of the Equipment, without liability to return to the Lessee any sums theretofore paid and free from all claims whatsoever; (3) remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject only to all non-waivable requirements of due process of law; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Item of Equipment, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Item of Equipment during such period, such present value to be computed in each case on the basis of a six (6) percent per annum discount, to the extent permitted by

law, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, plus (C) amounts due pursuant to the provisions of Section 10(b) hereof, or (y) a sum, with respect to each Item of Equipment, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment over the then present value of the actual rentals for such Item of Equipment which Lessor shall have contracted to receive pursuant to any lease in replacement of this Lease, such present value to be computed in each case on the basis of a six (6) percent per annum discount, to the extent permitted by law, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount calculated pursuant to clause (B) of this Section 11(b)(x), plus (C) an amount calculated pursuant to clause (C) of this Section 11(b)(x), or (z) an amount with respect to each Item of Equipment equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of such Item of Equipment if sold, or, if not sold at such time, the Fair Market Sales Value (as hereinafter defined). In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and ex-

penses incurred in connection with the return of any Item of Equipment.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

Except as otherwise provided in this Lease, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Items thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirement with respect to the enforcement of the Lessor's rights under this Lease and any and all rights of redemption.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or reoccurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor, the Trustor and the Loan Participants, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean any Corporate Officer of the Lessee who is designated as such in the annual report of the Lessee; provided, however, in the event no annual report is published by the Lessee in any year during the Lease Term, such term shall mean, with respect to the subject matter of any covenant,

agreement or obligation of the Lessee in this Lease contained, any Corporate Officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

12. *Return of Equipment.* The Lessor intends to retain the Equipment for lease or sale at the expiration or earlier termination of the Lease Term or any extension thereof to a subsequent lessee or purchaser. If this Lease shall terminate pursuant to Section 11 hereof, or upon the expiration of the Lease Term or extended term of this Lease (and provided that the Lessee has not exercised its option to purchase the Equipment or to extend the term of Lease) the Lessee will, at its own cost and expense, at the request of the Lessor, forthwith deliver possession of the Equipment to the Lessor. Each Item of Equipment so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, applicable to railroad equipment of the same type as the Equipment. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Item shall have been interchanged to return the Item of Equipment so interchanged) place such Items upon such storage tracks or other property of the Lessee or any of its affiliates as the Lessor may designate, or, in the absence of such designation, as the Lessee may select;

(b) permit the Lessor to store such Equipment on such tracks or other property of the Lessee at the risk of the Lessee, for a period not to exceed three (3) months from the date of such storage, without charge for insurance, rent or storage until such Equipment have been sold, leased or otherwise disposed of by the Lessor;

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor; and

(d) remove the Equipment from any cars to which they are attached and place them in storage areas adjacent to storage tracks of the Lessee or any of its affiliates, or re-install such Equipment on other cars, all as the Lessor reasonably may designate. The assembling, delivery, removal, re-installation, storage, insurance and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of the Lessee and without charge to the Lessor for insurance, and are of the essence of this Lease, and upon applications to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, remove, re-install and transport the Equipment. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee, or user of any such Item of Equipment, to inspect the same. If the Lessor is unable to sell or lease the Equipment, the Lessee shall provide at its own cost and expense a work crew to disassemble the Equipment and, at Lessor's direction, deliver it to a dealer in salvage metal for sale as salvage. All gross amounts earned in respect of the Equipment after the date of expiration or earlier termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly paid to the Lessor. In the event any Item of Equipment is not assembled, delivered, detached and stored, as hereinabove provided, within sixty (60) days after the date of expiration or earlier termination, the Lessee shall pay to the Lessor for each day after the sixtieth (60th) day an amount equal to the amount, if any, by which .0355% of the Purchase Price of such Item for

each such day exceeds all gross amounts received by the Lessor with respect to such Item for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Item of Equipment to the Lessor, to demand and take possession of such Item of Equipment in the name and on behalf of the Lessee from whomsoever shall be in possession of such Item of Equipment at the time.

13. *Assignment; Possession and Use.* So long as no Event of Default shall have occurred under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Equipment or any Item (by sublease or otherwise except as otherwise expressly set forth hereinafter with regard to the usual interchange of traffic). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Loan Participants or resulting from claims against the Lessor or the Loan Participants not related to the ownership of the Equipment) upon or with respect to any Item of Equipment, including any accession thereto, or the interest of the Lessor, the Loan Participants or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent expressly permitted by the provisions of the immediately succeeding paragraph.

So long as no Event of Default shall have occurred under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use of the Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the

Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Finance Agreement; provided, however, that the Lessee shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States. The Lessee may receive and retain compensation for such use from other railroads so using any of the Equipment, subject to Section 12 hereof. The Lessee represents and warrants to the Lessor that the Equipment will be used, and is intended for use, in connection with interstate commerce.

Nothing in this Section shall be deemed to restrict the right of the Lessee to assign or transfer its interest under this Lease in the Equipment or possession of the Equipment to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Finance Agreement) into or with which it shall have become merged or consolidated or which shall have acquired its property as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 9, 10, 11 and 12 and the rights to receive the rentals and other sums payable under this Lease) may inure to the benefit of the Lessor's assigns (including, but not limited to, the Loan Participants).

Pursuant to the Trust Agreement, the Lessor has granted to the Loan Participants as security for the performance of its obligations pursuant to the Trust Agreement, a security interest in all right, title and interest of the Lessor in and to the Equipment, this Lease and all rentals, issues and profits therefrom. The Lessee hereby acknowl-

edges receipt of notice of the grant of a security interest and agrees: (i) that the Loan Participants, in addition to the Lessor, shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under this Lease as though the Loan Participants were named herein as the lessor, except the obligations of the Lessee pursuant to Section 10(b) hereof; (ii) that the rental payments and other sums required to be paid by the Lessee hereunder shall not be subject to any right of setoff or counterclaim or other defense, and the payment thereof to the Lessor shall be final; (iii) that any rights acquired by the Lessee, by subrogation or otherwise, with respect to any of the Equipment by reason of any payment made by the Lessee pursuant hereto, may not be exercised until the Loan Participants have been paid all sums payable to them under the Finance Agreement; (iv) that the Loan Participants shall not, by virtue of the grant of a security interest, be or become subject to any liability or obligation under this Lease; and (v) that the Lease shall not be terminated or, without the prior written consent of the Loan Participants, amended, or modified, nor shall action be taken or omitted by the Lessee, if such amendment, modification, action or inaction would adversely affect the rights of the Loan Participants pursuant hereto.

14. *Renewal and Purchase Option.* Provided that this Lease has not been earlier terminated and that no Event of Default, or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than six (6) months prior to the end of the Lease Term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not less than all of the Equipment then covered by this Lease, for up to, but no more than, two (2) consecutive additional three-year periods, the first three-year period commencing on the scheduled expiration of the Lease Term and the second three-year period, if one is elected, commencing upon the expiration of the first extended term of this Lease, as the case may be, at the then Fair Market Rental Value (as hereinafter defined) payable in monthly payments in advance in each year of such extended term. An election to extend the Lease pursuant to this Section shall be irrevocable.

Fair Market Rental Value shall be determined with respect to all of the Equipment on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after thirty (30) days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Equipment, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within twenty (20) business days after such notice is given, each party shall appoint an independent appraiser within twenty-five (25) business days after such notice is given, and the two (2) appraisers so appointed shall within thirty-five (35) business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within thirty-five (35) business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value of the Equipment subject to the proposed extended term within twenty (20) days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental Value of the single appraiser appointed shall be final. If three (3) appraisers shall be appointed, their determination shall be averaged, except that if one determination materially and substantially differs from the other two determinations, such determination shall be excluded when calculating the average, and such average shall be final and binding on the parties hereto as the Fair Market Rental Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of

the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, any each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

The Lessee, provided that no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, will have the option to purchase all, but not less than all, of the Equipment upon the expiration of the Lease Term or any extension thereof, for an amount in each case equal to the then Fair Market Sales Value thereof. Fair Market Sales Value shall be determined on the basis of, and shall be equal in amount to, the sum which would obtain in an arm's-length transaction between an informed and willing purchaser (other than a purchaser currently in possession) and an informed and willing seller under no compulsion to sell, and, in such determination, costs of removal from the location of current use shall not be a deduction from such sum. Fair Market Sales Value shall be determined by agreement between the Lessor and the Lessee or, in the absence of such agreement, by independent appraisal utilizing as nearly as possible the procedure for appraisal for Fair Market Rental Value set forth in this Section. The Lessee must give the Lessor notice in writing of its desire to exercise such purchase option not less than one hundred eighty (180) days prior to the expiration of the Lease Term or any extension thereof. An election to purchase the Equipment pursuant to this Section shall be irrevocable.

The options to purchase and renew which are available to the Lessee pursuant to this Section may not at any time be exercised concurrently. In the event the Lessee shall deliver any such notice to the Lessor, the same shall be deemed without effect for all purposes of this Section. The exercise by the Lessee of any right of purchase shall constitute a waiver by the Lessee of all rights of renewal then or thereafter otherwise available hereunder. The exercise by the Lessee of any right of renewal shall constitute a waiver

by the Lessee of any right of purchase otherwise then available, but any right of purchase or renewal provided for herein during any succeeding renewal term shall not be deemed waived.

15. *Recording.* The Lessee, at its own expense, will cause this Lease, the Trust Agreement and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and will cause this Lease to be deposited with the appropriate public offices pursuant to Section 86 of the Railway Act of Canada. The Lessee will (at its own expense) cause the filing, registering, deposit and recording required of the Lessor under the Finance Agreement, including any filings under the Uniform Commercial Code, and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Loan Participants for the purpose of proper protection, to their satisfaction, of the Loan Participants' and the Lessor's respective interests in the Equipment, or for the purpose of carrying out the intention of this Lease, the Finance Agreement and the Assignment; and the Lessee will promptly furnish to the Loan Participants and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion of counsel for the Lessee with respect thereto satisfactory to the Loan Participants and the Lessor. This Lease, the Trust Agreement and the Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Item of Equipment, and this Lease shall be deposited with the appropriate public offices pursuant to Section 86 of the Railway Act of Canada and any Uniform Commercial Code filing shall be completed prior to such delivery and acceptance.

16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to twelve and one-half (12½) percent per annum of the overdue rentals and other obligations for the period of time during which they are overdue.

17. *Notices.* Any notice required or permitted to be given by any party hereto to another party shall be deemed to have been given when mailed, first class certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) if to the Lessor, at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, attention of Corporate Trust Department; with copies to the Trustor, at 1200 Philadelphia Pike, Claymont, Delaware 19073; Attention: President;

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104; Attention: Vice President and Treasurer; and

(c) if to the Loan Participants, to Provident National Bank at Broad and Chestnut Streets, P.O. Box 7648, Philadelphia, Pennsylvania 19101; Attention: Joseph H. Pratt, Banking Officer, and to The Union National Bank of Pittsburgh, Fourth Avenue and Wood Street, P.O. Box 837, Pittsburgh, Pennsylvania 15230; Attention: William M. Gormly, Assistant Vice President;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

18. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be; as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Trust Agreement, the Finance Agreement, the Purchase Order and the Assignment, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Equipment and, except for the Finance Agreement, supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

19. *No Recourse.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements of The Fidelity Bank, or for the purpose or with the intention of binding said Bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said Bank solely in the exercise of the powers expressly conferred upon the said Bank as Trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank or the Trustor or on account of any representation, undertaking or agreement of said Bank as Lessor, or the Trustor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

20. *Agreements for Benefit of Trustor.* All rights of the Lessor hereunder (including, but not limited to, its rights under Sections 6, 7, 9, 10, 11 and 12 and the right to receive the rentals and other sums payable under this Lease) shall inure to the benefit of the Trustor and the Trustor's assigns under the Trust Agreement.

21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Loan Participants pursuant to the assignment hereof shall be deemed to be the original (and shall be so marked) and all other counterparts shall be deemed duplicates thereof (and shall be marked counterparts). Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

22. *Governing Law.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be

entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by Section 86 of the Railway Act of Canada.

23. *Obligations of Lessor Under the Trust Agreement and/or the Finance Agreement; Additional Rentals.* In the event that the Lessor shall become obligated to make any payment or to perform any obligations pursuant to the Trust Agreement and/or the Finance Agreement not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations pursuant to the Trust Agreement and/or the Finance Agreement shall be fully performed, without regard for any limitation of liability of the Lessor contained in the Trust Agreement and/or the Finance Agreement plus an amount which, after subtracting all net federal, state or local taxes which are or will be required to be paid by the Trustor, as shall be required to maintain the Trustor's net after-tax cash flows and return on its investment. This Section is not to be construed as a guaranty of the loan from the Loan Participants to the Lessor, as Trustee of the grantor trust.

24. *Lessor's Right to Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at a rate equal to the lesser of twelve and one-half (12 ½) percent per annum or the maximum rate permitted by applicable law, shall be payable by the Lessee upon demand.

25. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Trustor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators,

stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease of Railroad Equipment to be executed under seal as of the date first above written.

ATTEST:

THE FIDELITY BANK,
as trustee
Lessor
Account No.
By: _____

ATTEST:

CONSOLIDATED RAIL
CORPORATION, '
Lessee
By: _____

The above Lease and all lease rentals and certain other payments derived therefrom are subject to a security interest in favor of certain loan participants under a Trust Agreement, dated as of July 18, 1978. This Lease has been executed in several counterparts of which this is Counterpart Number _____. To the extent that this Lease constitutes "chattel paper" or other collateral within the meaning of the Uniform Commercial Code in effect in any jurisdiction, only the counterpart stamped or marked "Counterpart Number 1" shall constitute such chattel paper or other collateral.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this _____ day of July, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of THE FIDELITY BANK, that one of the seals affixed to the foregoing instrument is the seal of said bank, as Trustee and not in its individual capacity, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank in said capacity.

Notary Public

My Commission Expires:

_____, 19____

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this _____ day of July, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

_____, 19____

SCHEDULE A TO LEASE

TRI-LEVEL ENCLOSED AUTO RACKS

<i>Quantity</i>	<i>Lessee's Identifying Numbers</i>
227	CR 4501-4727

SCHEDULE B TO LEASE

CASUALTY VALUES

<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>	<i>No.</i>	<i>Percentage Loss Values</i>
1	107.788854	31	98.813416	61	72.187451	91	43.492937
2	107.649701	32	98.383794	62	69.701093	92	42.732499
3	107.509059	33	97.941936	63	69.083679	93	41.976071
4	107.366916	34	97.496205	64	68.461171	94	41.211647
5	107.161813	35	97.038111	65	67.833721	95	40.451199
6	106.954710	36	94.338410	66	67.199764	96	39.682718
7	106.745589	37	91.634675	67	66.559984	97	38.906141
8	106.534433	38	89.282024	68	65.914334	98	38.133440
9	106.299204	39	88.799202	69	65.266954	99	37.352605
10	106.061736	40	88.312181	70	64.613642	100	36.563572
11	105.799990	41	87.812466	71	63.958536	101	35.778313
12	105.535796	42	87.308417	72	63.297432	102	34.983535
13	105.269136	43	86.799999	73	62.630284	103	34.179871
14	104.977967	44	86.287176	74	61.961227	104	33.367251
15	104.684120	45	85.766193	75	61.286060	105	32.561488
16	104.387572	46	85.240703	76	60.604731	106	31.746750
17	104.066281	47	84.706951	77	59.921379	107	30.938848
18	103.742075	48	84.168590	78	59.230481	108	30.121648
19	103.414929	49	83.625584	79	58.532705	109	29.295379
20	103.084820	50	83.074174	80	57.827997	110	28.475855
21	102.737070	51	82.518012	81	57.124437	111	27.647240
22	102.386195	52	81.957062	82	56.413895	112	26.809464
23	102.017518	53	81.387563	83	55.704451	113	25.978337
24	101.645550	54	80.813608	84	52.750370	114	25.143316
25	101.270263	55	80.234917	85	49.789201	115	24.301443
26	100.876981	56	79.651451	86	47.192635	116	23.452660
27	100.480213	57	79.063362	87	46.462923	117	22.599004
28	100.079931	58	78.470421	88	45.726015	118	21.738341
29	99.661454	59	77.872779	89	44.989989	119	20.872708
30	99.239293	60	75.032601	90	44.245413	120	20.000001

FINANCE AGREEMENT

Dated as of July 18, 1978

Among

CONSOLIDATED RAIL CORPORATION,

Lessee

and

HELEASCO TWO, INC.,

Trustor

and

PROVIDENT NATIONAL BANK

and

THE UNION NATIONAL BANK OF PITTSBURGH,

Loan Participants

and

THE FIDELITY BANK,

Trustee

CONSOLIDATED RAIL CORPORATION

**227 Tri-level Enclosed
Auto Racks**

FINANCE AGREEMENT

INDEX

	PAGE
1. Loans	1
2. Execution Date; Closing Dates	1
3. Conditions Precedent — Execution Date	2
4. Documents — Closing Dates	7
5. Documents — Final Closing Date	10
6. Representations and Warranties	11
7. Liabilities of Participants	19
8. Lessee's Indemnities	19
9. Consent to Other Documents	19
10. Miscellaneous	20
11. Representations and Warranties to Survive Delivery	20

FINANCE AGREEMENT dated as of July 18, 1978 among CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Lessee"); HELEASCO TWO, INC., a Delaware corporation ("Trustor"); PROVIDENT NATIONAL BANK, a national banking association, and THE UNION NATIONAL BANK OF PITTSBURGH, a national banking association, severally and not jointly (collectively, "Loan Participants; the Loan Participants together with the Trustor being sometimes collectively referred to as "Participants"); and THE FIDELITY BANK, a Pennsylvania banking corporation, as Trustee ("Trustee") under an Equipment Trust Agreement dated as of the date hereof between the Trustor and the Trustee ("Trust Agreement").

All terms used herein which are not herein defined shall have the meanings specified in the Trust Agreement or in the Lease of Railroad Equipment of even date herewith ("Lease") between the Trustee, as lessor, and Lessee, as lessee.

SECTION 1. *Loans.* On each Closing Date the Trustor shall make an investment in the beneficial ownership of the Equipment in the amount of the Trustor's Commitment. Subject to the terms and conditions of this Agreement, on each Closing Date the Loan Participants, severally and not jointly, agree to make loans to the Trustee, repayable in accordance with the terms of the Trust Agreement, in the amount of the Loan Participants' Allocated Commitments.

The principal amount of the loans made by the Loan Participants shall be evidenced by Interim Equipment Trust Certificates in the principal amount of such loans, dated the Closing Date(s) and otherwise as provided in Article III of the Trust Agreement. On the Final Closing Date, the principal amount of all loans made on or before that date by each Loan Participant shall be evidenced by a single Equipment Trust Certificate in a principal amount equal to the amount of such Loan Participant's Allocated Commitment received by the Trustee, which shall be payable as to principal and interest and otherwise as provided in Article III of the Trust Agreement.

SECTION 2. *Execution Date; Closing Dates.* (a) Execution Date shall mean the date on which all parties hereto make, execute and deliver this Finance Agreement and any other instruments or documents required hereunder and on which the appropriate parties also make, execute and deliver the Trust Agreement, the Lease, the

Assignment and any other instruments or documents required thereunder. Execution shall occur at the offices of Messrs. Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania on or before the first Delivery Date.

(b) Closing Date shall mean the twenty-fourth (24th) day of each month beginning August 24, 1978, until the Final Closing Date.

(c) Final Closing Date shall mean the Closing Date specified in the notice given by the Lessee pursuant to Section 2 of the Lease (but in no event later than November 1, 1978).

SECTION 3. *Conditions Precedent — Execution Date.* It is agreed that the obligations of the Trustor and Loan Participants to advance the Trustor's Commitment and the Loan Participant's Allocated Commitments, respectively, on each Closing Date and the obligation of the Trustee to accept delivery of each Item of Equipment to be delivered subsequent to the Execution Date and prior to the first Closing Date are subject to the fulfillment on the Execution Date, to the reasonable satisfaction of the Trustee, the Trustor and the Loan Participants, of the following conditions precedent:

(a) The following documents shall have been duly authorized, executed and delivered by the respective party or parties thereto and shall be in full force and effect as of the Execution Date, and an executed counterpart of each thereof shall be delivered to the Trustee with copies to each Participant:

(i) The Trust Agreement;

(ii) The Assignment, substantially in the form of Exhibit I attached to the Trust Agreement;

(iii) The Lease, substantially in the form of Exhibit II attached to the Trust Agreement; and

(iv) Such other documents as the Participants or their counsel shall reasonably request.

(b) The Participants and the Trustee shall have received a favorable opinion, dated the Execution Date, from Joseph T. Rowan, Esquire, counsel for the Lessee, satisfactory in scope and substance to them, as to: (w) the non-necessity of obtaining the approval of the Interstate Commerce Commission pursuant

to Section 20a of the Interstate Commerce Act with respect to the Interim Equipment Trust Certificates and the Equipment Trust Certificates; (x) the non-necessity of registering the Interim Equipment Trust Certificates, the Equipment Trust Certificates and the Trustor's interest in the Trust Estate under the Securities Act of 1933, as amended (the "Securities Act"), and the non-necessity of qualifying the Trust Agreement under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), in connection with the offering, sale and delivery of such Interim Equipment Trust Certificates, such Equipment Trust Certificates and such Trustor's interest, based upon the representations contained in sub-parts (a), (b), (c), (d)(ii) and (f)(xiii) of Section 6 of this Agreement; (y) each of the matters set forth in sub-parts (f)(i) through (x) of Section 6 of this Agreement; and (z) as to such other matters incident to the transactions contemplated hereby as the Trustor, the Trustee and the Loan Participants may reasonably request. In giving the opinion as to the matters set forth in sub-part (f)(vi) of Section 6 of this Agreement, counsel for the Lessee may rely on the opinion of counsel for the Builder furnished pursuant to paragraph (g) of this Section.

(c) The Participants shall have received a favorable opinion, dated the Execution Date, from Messrs. Morgan, Lewis and Bockius, counsel for Trustee, as to:

(i) The due organization and valid existence in good standing of the Trustee as a banking corporation under the laws of the Commonwealth of Pennsylvania, and the power and authority of the Trustee to execute, deliver and carry out the terms of this Agreement, the Trust Agreement, the Lease and the Assignment and to issue, execute and deliver the Interim Equipment Trust Certificates and the Equipment Trust Certificates;

(ii) The due authorization, execution and delivery by the Trustee of this Agreement, the Trust Agreement, the Lease and the Assignment, and the validity and binding effect thereof as to the Trustee in accordance with their terms;

(iii) The due authorization for the issuance, execution and delivery by the Trustee of the Interim Equipment Trust

Certificates and the Equipment Trust Certificates and, upon the execution and delivery thereof by the Trustee, the validity and binding effect thereof as to the Trustee in accordance with their terms;

(iv) Upon the issuance, execution and delivery of the Interim Equipment Trust Certificates and the Equipment Trust Certificates, the Trust Agreement creating for the benefit of the holders thereof a duly created and validly existing beneficial interest in the Trust Estate pursuant to the terms of the Trust Agreement;

(v) The execution, delivery and performance by the Trustee of this Agreement, the Trust Agreement, the Lease, the Assignment, the Interim Equipment Trust Certificates and the Equipment Trust Certificates not being in violation of: the Articles of Incorporation or By-Laws of the Trustee; any license (limited specifically to the charters and licenses given by those governmental and regulatory authorities having power to license and regulate the conduct of Pennsylvania banking corporations); any statute, law or governmental regulation of the United States or the Commonwealth of Pennsylvania intended to govern the conduct of business of banking corporations, financial institutions or fiduciaries; or, to such counsel's knowledge, any indenture, agreement or other instrument to which the Trustee is a party or by which it is bound or any judgment or order applicable to the Trustee;

(vi) There are no taxes, fees or other charges payable by the Trustee under the laws of the United States or the Commonwealth of Pennsylvania in connection with its execution and delivery of the Trust Agreement, this Agreement, the Interim Equipment Trust Certificates or the Equipment Trust Certificates;

(vii) No approval, consent, order or authorization of or registration with or notice to any governmental authority intended to govern the conduct of business of banking corporations, financial institutions or fiduciaries is required to be obtained by the Trustee under the laws of the United

States or the Commonwealth of Pennsylvania for the carrying out by the Trustee of any of the transactions contemplated by this Agreement, the Trust Agreement, the Lease and the Assignment; and

(viii) In view of the filings, recordings and other actions referred to in Section 4(B)(c) hereof, upon making the loans to the Trustee as set forth in Section 1 hereof, and the payment by the Trustee of the Purchase Price of the Equipment, the Loan Participants will have a valid perfected first security interest in the Lease and the Equipment (and the proceeds of any sale thereof) theretofore delivered to and paid for by the Trustee and no other filing or recording with any Federal, state or local governmental authority is necessary in order to protect the interests of the Loan Participants or the Trustee in and to the Lease and the Equipment in any state of the United States or the District of Columbia. In rendering such opinion, counsel may rely on the opinion of counsel for the Builder furnished pursuant to paragraph (g) of this Section and may assume that the Equipment does not constitute an accession to the railroad cars to which it will be affixed or otherwise become subject to any security interest or other lien granted under any mortgage, loan agreement, indenture, equipment trust or other agreement applicable to such cars or to which such cars are otherwise subject, and no opinion need be expressed as to the characterization of the Equipment as "rolling stock" under the Interstate Commerce Act, the Pennsylvania Uniform Commercial Code, the Railway Act of Canada or other applicable law or as to any security interest in favor of the Loan Participants under the laws of Canada in respect of Equipment which may from time to time be subject to the jurisdiction of Canada or any province or territory thereof.

(d) The Participants and the Trustee shall have received a favorable opinion, dated the Execution Date, from Messrs. Ober, Grimes & Shriver, special counsel for the Trustor (which may, as to the laws of the State of Delaware and of the Commonwealth of Pennsylvania, rely upon the opinion of Kenneth A. Ritchie, Esquire, counsel for Trustor), as to:

(i) The due organization and valid existence in good standing of the Trustor as a corporation under the laws of the State of Delaware, and the power and authority of the Trustor to enter into this Agreement and the Trust Agreement;

(ii) The due authorization, execution and delivery by the Trustor of this Agreement and the Trust Agreement, and the validity and binding effect thereof as to the Trustor in accordance with their terms;

(iii) There are no taxes, fees or other charges payable under the laws of the United States or the Commonwealth of Pennsylvania in connection with the execution and delivery by the Trustor of the Trust Agreement or of this Agreement;

(iv) The execution, delivery and performance by the Trustor of this Agreement and the Trust Agreement not being in violation of the Articles of Incorporation or By-Laws of the Trustor, or of any license, judgment, statute, law or governmental regulation applicable to it or, to the best of such counsel's knowledge, any indenture, agreement or other instrument to which the Trustor is a party or by which it is bound or any judgment or order applicable to the Trustor; and

(v) No approval, consent, order or authorization of or registration with or notice to any governmental authority is required to be obtained by the Trustor under the laws of the United States or the Commonwealth of Pennsylvania for the carrying out by the Trustor of any of the transactions contemplated by this Agreement and the Trust Agreement.

(e) The Participants, the Trustee and the Lessee shall have received a favorable opinion (such opinion to state that the Loan Participants are justified in relying on the opinions furnished pursuant to paragraphs (b), (c) and (d) of this Section), dated the Execution Date, from Messrs. Ballard, Spahr, Andrews & Ingersoll, special counsel for the Loan Participants, as to:

(i) The due organization and valid existence in good standing of the Loan Participants as national banking as-

sociations under the laws of the United States, and the power and authority of the Loan Participants to execute, deliver and carry out the terms of this Agreement; and

(ii) The non-necessity of registering the Interim Equipment Trust Certificates, the Equipment Trust Certificates and the Trustor's interest in the Trust Estate under the Securities Act, and the non-necessity of qualifying the Trust Agreement under the Trust Indenture Act, in connection with the offering, sale and delivery of such Interim Equipment Trust Certificates, such Equipment Trust Certificates and such Trustor's interest, based upon the representations contained in sub-parts (a), (b), (c), (d)(ii) and (f)(xiii) of Section 6 of this Agreement.

(f) The Builder shall have received a favorable opinion, dated the Execution Date, from Messrs. Ober, Grimes & Shriver, special counsel for the Trustor (which shall rely on the opinions furnished pursuant to paragraphs (b), (c), (e) and (g) of this Section), as to:

(i) The due authorization, execution and delivery by the parties hereto of this Agreement and by the respective parties thereto of the Lease, the Trust Agreement and the Assignment, and the validity and binding effect thereof as to the parties hereto and the respective parties thereto in accordance with their terms.

(g) The Participants and Trustee shall have received a favorable opinion, dated the Execution Date, from James C. Horton, Esquire, Counsel for the Builder as to:

(i) The due authorization, execution and delivery by the Builder of the Consent and Agreement to the Assignment, and the validity and binding effect thereof as to the Builder in accordance with its terms;

(ii) Upon execution and delivery by the Builder of the Builder's Certificates of Delivery and bills of sale, the due

authorization, validity and binding effect thereof as to the Builder in accordance with their terms;

(iii) Upon delivery of payment to the Builder and upon execution and delivery by the Builder of the bill of sale for each Item of Equipment to the Trustee, good and marketable title to such Item of Equipment, free and clear of all liens, charges or other encumbrances, arising as a result of acts of or claims against the Builder including any claim by the Builder against the Trustee, the Trust Estate or such Item of Equipment (excepting only the rights of the Participants under this Agreement and the rights of the Lessee under the Lease) shall pass to the Trustee.

(h) All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents incident thereto (including without limitation the documents to be delivered pursuant to this Section and to Sections 4 and 5 hereof) shall be reasonably satisfactory in form and substance to special counsel for the Loan Participants, the Trustor, the Trustee and the Lessee. In giving the opinions on the Execution Date and on the Closing Dates specified in this Agreement each counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar law or equitable principles relating to or affecting the enforcement of creditors' rights.

SECTION 4. *Documents — Closing Dates.* (A) As to each Item of Equipment delivered prior to each Closing Date, the obligation of the Trustor and the Loan Participants to advance the Trustor's Commitment and the Loan Participant's Allocated Commitments, respectively, to the Trustee on such Closing Date are subject to the fulfillment on such Closing Date, to the reasonable satisfaction of the Participants and Trustee, of the following:

(a) The following documents shall have been duly authorized, executed and delivered to the Trustee with copies to each Participant:

(i) Builder's Delivery Certificates and bills of sale with respect to each Item of Equipment theretofore delivered together with an opinion of James C. Horton, Esquire, counsel to the Builder to the effect that such Delivery Certificates and bills of sale have been duly authorized, executed and delivered by Builder; and

(ii) Lessee's Certificates of Cost and Certificates of Delivery with respect to each Item of Equipment theretofore delivered.

(b) The Trustee shall not have actual knowledge of the occurrence of any Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default).

(c) The obligation of the Loan Participants to advance the Loan Participant's Allocated Commitments to the Trustee are additionally subject to the delivery by the Trustor to the Trustee on such Closing Date of the Trustor's Commitment.

(B) As to each Item of Equipment to be delivered subsequent to each Closing Date, the obligation of the Trustee to accept delivery of such Item of Equipment shall be subject to the fulfillment on such Closing Date, to the reasonable satisfaction of the Participants and the Trustee, of the following:

(a) The following documents shall have been duly authorized, executed and delivered to the Trustee with copies to each Participant:

(i) A bringdown certificate of Lessee, dated as of such Closing Date and signed by a Vice President of Lessee, reciting that there has occurred no Event of Default under the Lease and that the representations and warranties made by Lessee on the Execution Date pursuant to Section 6 of this Agreement shall be true on and as of each Closing Date with the same force and effect as though such representations and warranties had been made on and as of each Closing Date;

(ii) A favorable opinion, dated as of each Closing Date, from Joseph T. Rowan, Esquire, counsel for Lessee, as to each of the matters referred to in Section 3(b) of this Agreement; and

(iii) Such other documents as the Trustee or its counsel shall reasonably request.

(b) The Trustee shall not have actual knowledge of the occurrence of any Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default).

(c) In order to protect the interest of the Loan Participants in and to the Trust Estate, the following acts shall have been performed prior to the first Delivery Date:

(i) Uniform Commercial Code financing statements shall have been duly filed or recorded with the Secretary of the Commonwealth of Pennsylvania and with the Prothonotaries of Montgomery and Philadelphia Counties and in all public offices in the Commonwealth of Pennsylvania wherein such filing or recording is necessary to accomplish the purposes therefor;

(ii) The Trust Agreement, the Assignment and the Lease shall have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act;

(iii) The Lease shall have been deposited with the appropriate public offices pursuant to Section 86 of the Railway Act of Canada; and

(iv) The Loan Participants shall have taken possession of Counterpart No. 1 of the Lease.

(d) The Participants shall have received a favorable opinion, dated as of such Closing Date, from Messrs. Morgan, Lewis and Bockius, counsel for Trustee, as to each of the matters referred to in Section 3(c) of this Agreement, giving effect to the execution and delivery of the Interim Equipment Trust Certificates.

(e) The Participants and the Trustee shall have received a favorable opinion, dated as of such Closing Date, from Messrs. Ober, Grimes & Shriver, special counsel for the Trustor (which may, as to the laws of the State of Delaware and of the Commonwealth of Pennsylvania, rely upon the opinion of Kenneth A. Ritchie, Esquire, counsel for Trustor), as to each of the matters referred to in Section 3(d) of this Agreement.

(f) The Participants, the Trustee and the Lessee shall have received a favorable opinion (such opinion to state that the Loan Participants are justified in relying on the opinions furnished pursuant to paragraphs (B)(a)(ii), (d) and (e) of this Section), dated as of such Closing Date, from Messrs. Ballard, Spahr, Andrews & Ingersoll, special counsel for the Loan Participants, as to each of the matters referred to in Section 3(e) of this Agreement.

(g) The terms and conditions of Section 4.02 of the Trust Agreement shall have been satisfied.

(h) All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents incident thereto shall be reasonably satisfactory in form and substance to special counsel for the Loan Participants, the Trustor, the Trustee and the Lessee.

SECTION 5. *Documents — Final Closing Date.* The obligation of the Trustor and the Loan Participants to advance the Trustor's Commitment and the Loan Participant's Allocated Commitments, respectively, to the Trustee on the Final Closing Date and the obligation of the Trustee to exchange the Equipment Trust Certificates for the Interim Equipment Trust Certificates are subject to the fulfillment, to the reasonable satisfaction of the Participants and the Trustee, of the following:

(a) As to each Item of Equipment delivered subsequent to the immediately preceding Closing Date and prior to the Final Closing Date, the following documents shall have been duly authorized, executed and delivered to the Trustee with copies to each Participant:

- (i) Builder's Delivery Certificates and bills of sale; and
- (ii) Lessee's Certificates of Cost and Certificates of Delivery.

(b) The Trustee shall not have actual knowledge of the occurrence of any Event of Default (or other event which with the lapse of time or notice or both would constitute an Event of Default).

(c) The Interim Certificates shall have been surrendered to the Trustee.

SECTION 6. *Representations and Warranties.* (a) Each of the Participants severally represents and warrants that: (i) each Interim Equipment Trust Certificate, Equipment Trust Certificate and interest of the Trustor in the Trust Estate to be acquired by it hereunder is being acquired for its own account; and (ii) in each case each Interim Equipment Trust Certificate, Equipment Trust Certificate and interest of the Trustor in the Trust Estate is being acquired for investment and not with a view to the distribution thereof or with any present intention of selling such Certificates or interest, provided that, subject to applicable federal and state securities laws, the disposition of such Certificates or interest shall at all times be within its control.

(b) Each of the Loan Participants and the Trustor hereby severally confirms its understanding that the Interim Equipment Trust Certificate, the Equipment Trust Certificate and interest of the Trustor in the Trust Estate to be acquired by it hereunder will not be registered under the Securities Act and are "restricted securities" within the meaning of the rules and regulations of the Securities and Exchange Commission under said Act; severally understands that the Certificates will not be approved by the Interstate Commerce Commission pursuant to Section 20a of the Interstate Commerce Act and that, in the opinion of counsel for the Lessee, such approval is not required; severally understands that the Certificates must be held until maturity unless a subsequent disposition thereof is registered under said Act or is exempt from registration and confirms that no person has made any representation to it as to the availability of any exemption from registration under said Act; severally understands that neither the Trustor, Lessee nor the Trustee is under any

obligation to register the Certificates and interest of the Trustor in the Trust Estate under said Act; and severally understands that all Certificates are to contain a legend substantially as follows:

"This (Interim) Equipment Trust Certificate has not been registered under the Securities Act of 1933, as amended, or approved by the Interstate Commerce Commission pursuant to Section 20a of the Interstate Commerce Act, and the sale, transfer or other disposition of this (Interim) Equipment Trust Certificate is subject to Section 3.07 of the Trust Agreement, dated as of _____, 1978, pursuant to which this (Interim) Equipment Trust Certificate was issued, copies of which are on file at the Corporate Trust Department of the Trustee."

(c) The Trustor represents and warrants that: (i) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to enter into this Agreement and the Trust Agreement and to carry out the transactions contemplated hereby and thereby; (ii) this Agreement and the Trust Agreement have been duly authorized by all necessary action on the part of the Trustor and have been duly executed and delivered by a duly authorized officer or agent of the Trustor and are valid and binding upon the Trustor in accordance with their terms; (iii) the execution, delivery and performance by the Trustor of this Agreement and the Trust Agreement will not result in any violation of or be in conflict with or constitute a default under any of the terms of the Articles of Incorporation or the By-Laws of the Trustor, or of any indenture, agreement or other instrument, license, judgment, order, statute, law or governmental regulation of the United States or of the Commonwealth of Pennsylvania; (iv) no approval, consent, order or authorization of or registration with or notice to any federal, state or other governmental authority is required in connection with the execution and delivery by the Trustor of this Agreement or the Trust Agreement or the carrying out by the Trustor of any of the transactions contemplated hereby or thereby; and (v) neither it nor anyone acting on its behalf has directly or indirectly offered any Interim Equipment Trust Certificate, Equipment Trust Certificate, interest in the Trust Estate or any similar securities, for sale to, or solicited any offer to acquire any of the same from anyone.

(d) Each of the Loan Participants severally represents and warrants that: (i) it is a national banking association duly organized and validly existing in good standing under the laws of the United States and has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby; and (ii) neither it nor anyone acting on its behalf has directly or indirectly offered any Interim Equipment Trust Certificate, Equipment Trust Certificate, interest in the Trust Estate or any similar securities, for sale to, or solicited any offer to acquire any of the same from anyone.

(e) The Trustee represents and warrants that: (i) the Trustee is a Pennsylvania banking corporation duly organized and validly existing in good standing under the laws of the Commonwealth of Pennsylvania, is duly authorized to transact a trust business in the Commonwealth of Pennsylvania and has the corporate power and authority to enter into and perform its obligations under this Agreement, the Trust Agreement, the Assignment and the Lease; (ii) this Agreement, the Trust Agreement, the Assignment and the Lease have been duly authorized, executed and delivered by the Trustee and constitute legal, valid and binding obligations of the Trustee, enforceable against the Trustee in accordance with the terms thereof; (iii) the execution, delivery and performance by the Trustee of this Agreement, the Trust Agreement, the Assignment and the Lease do not and will not contravene any law or any governmental rule, regulation or order applicable to the Trustee as a banking institution or in its capacity as a fiduciary or the Articles of Incorporation or By-Laws of the Trustee or any licenses or charters given by those governmental and regulatory authorities having power to license and regulate the conduct of Pennsylvania banking corporations or contravene the provisions of, or constitute a default under, or subject any Item of Equipment to any lien of, any indenture, mortgage or other agreement (other than the Agreements) to which the Trustee is a party or by which the Trustee is bound; (iv) neither the execution and delivery by the Trustee of this Agreement, the Trust Agreement, the Assignment or the Lease, nor the performance by the Trustee of any of the transactions contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority intended to govern the con-

duct of business of banking corporations or financial institutions or fiduciaries by the Trustee; and (v) the location of the office at which the Trustee keeps or will keep its records concerning this Agreement, the Assignment, the Trust Agreement and the Lease is (and the Trustee shall notify Lessee and the Participants of a change in such location) at the Corporate Trust Department of the Trustee at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109.

(f) The Lessee covenants, represents and warrants that:

(i) Lessee is a corporation duly organized and validly existing in good standing under the laws of the Commonwealth of Pennsylvania and has the corporate power and authority, and is duly qualified and authorized to do business in all jurisdictions where it operates or, if not so qualified or authorized, the failure to be so qualified or authorized will not materially or adversely affect its ability to carry on its present business and operations as presently conducted and to own or hold under lease its properties and to perform its obligations under this Agreement, the Assignment and the Lease;

(ii) Lessee has full power, authority and legal right to enter into and perform this Agreement, the Assignment and the Lease, and the execution, delivery and performance of this Agreement, the Assignment and the Lease have been duly authorized by all necessary corporate action on the part of Lessee, do not require any shareholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and do not contravene any franchise, license, permit, judgment, law, governmental rule, regulation or order binding on Lessee or the Articles of Incorporation or By-laws of Lessee or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or any of its properties may be bound;

(iii) No mortgage, deed of trust, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interests therein of Lessee now attaches or hereafter will attach to any Item of Equipment, or in any

manner affects or will affect adversely the Trustee's right, title and interest therein;

(iv) Neither the execution and delivery by the Lessee of this Agreement, the Assignment and the Lease, nor the performance by the Lessee of any of the transactions contemplated hereby or thereby requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency having regulatory jurisdiction over the Lessee or the Equipment (including, without limitation, the Interstate Commerce Commission and the Securities and Exchange Commission);

(v) This Agreement, the Assignment and the Lease have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with the terms thereof; and the Lessee is not in default in any material respect under the Purchase Order;

(vi) The filings, recordings and other actions referred to in Section 4(B)(c) hereof will protect the interests of the Trustee and the Participants in and to the Trust Estate and will perfect a valid first security interest in the Lease and the Equipment (and the proceeds of any sale thereof), and upon the payment by the Trustee of the Purchase Price of the Equipment no additional filing, recording or deposit (or giving of notice) with any other federal, state or local governmental authority is necessary in order to protect the interests of the Trustee or any Participant in and to the Trust Estate;

(vii) Except as described in Appendix II to a Memorandum for Private Investors dated as of February 15, 1978, as supplemented by the First Supplement thereto dated April 26, 1978 and the Second Supplement thereto dated July 5, 1978 (collectively, the "Memorandum"), there are no actions, suits or proceedings pending, or to the knowledge of the Lessee threatened, before any court, administrative agency, environmental council, arbitrator or governmental body which, individually or in the aggregate, will, if determined adversely to the Lessee, im-

pair its ability to perform its obligations under this Agreement, the Lease, and the Assignment;

(viii) The Assignment is effective to convey to the Trustee the rights and claims purported to be conveyed thereby, free and clear of all liens arising from or through the Lessee and effective to retain in the Lessee such rights and duties as are purported to be retained thereunder without any obligation, liability or duty whatsoever on the part of the Trustee to exercise such rights or perform the duties so retained;

(ix) The Lessee is not in default in the payment of the principal of or interest on any material indebtedness for borrowed money or, with the exception of the Financing Agreement with the United States Railway Association dated March 12, 1976, in default under any instrument or instruments or agreements under and subject to which any material indebtedness for borrowed money has been issued, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder;

(x) Except as to those tax matters referred to in the Memorandum, the Lessee has filed all foreign, state and United States income tax returns which are required to be filed by it, and has paid or made provision for the payment of all taxes which have become due pursuant to said returns or pursuant to any assessment in respect thereof received by the Lessee, except such taxes, if any, as are being contested in good faith;

(xi) The Lessee covenants that it will not sublease the Equipment subject to the Lease to any person which is at the time a party in interest with respect to any employee benefit plan the assets of which were used by the Trustor in making its investment pursuant to this Agreement or the Loan Participants in making the loans pursuant to this Agreement, all within the meaning of ERISA (as hereinafter defined);

(xii) The audited statement of financial condition of Lessee as of December 31, 1977, the related audited statements of income and retained earnings and changes in financial position

(copies of which have been furnished the Participants) fairly set forth in accordance with generally accepted accounting principles consistently applied the financial condition of Lessee as of the date thereof and the results of its operations for the twelve (12) month-period then ended, and except as generally described in the Memorandum, since December 31, 1977, there has been no material adverse change in such condition or results of operations and nothing has occurred which will materially adversely affect the ability of Lessee to carry on its business and operations and to perform its obligations under this Agreement, the Assignment or the Lease;

(xiii) Neither the Lessee nor anyone acting on behalf of the Lessee has directly or indirectly offered any Interim Equipment Trust Certificates, Equipment Trust Certificates or any similar securities relating to the Equipment, or any interest in and to the Trust Agreement, for sale to, or solicited any offer to acquire any of the same from or otherwise approached or negotiated with respect thereto with anyone other than the Participants and not more than nine (9) other financial institutions, each of which has been identified to special counsel for the Trustor and to special counsel for the Loan Participants;

(xiv) Lessee has not taken and will not take prior to any Delivery Date any action that would entitle Lessee to the status of "first user" with respect to any Item of Equipment within the meaning of the Internal Revenue Code of 1954, as amended (the "Code") and the regulations issued thereunder;

(xv) Neither the financial statements referred to herein nor any representation or warranty of Lessee contained in this Agreement nor any written statement or other information furnished by or on behalf of Lessee to the Participants in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which Lessee has not disclosed to the Participants in writing which materially affects adversely or, so far as Lessee can now foresee in the exercise of the best

judgment of Lessee and its officers, will materially affect adversely the ability of Lessee to perform this Agreement;

(xvi) Until payment in full of the principal of and the interest on the Certificates, Lessee will deliver to each Participant:

(a) As soon as practicable and in any event within one hundred twenty (120) days after the end of each fiscal year, consolidated statements of income and of retained earnings of Lessee for such year, and consolidated balance sheets of Lessee as of the end of such year, setting forth in each case, in comparative form, corresponding figures for the preceding fiscal year, all in reasonable detail and certified by independent public accountants of nationally recognized standing selected by Lessee;

(b) Concurrently with the financial statements required by sub-part (a) above, a copy of Lessee's most recent annual report; and

(c) Such other financial data as may from time to time reasonably be requested by any Participant;

(xvii) Until payment in full of the principal of, and interest on the Certificates, Lessee will permit any authorized representative designated by any Participant to visit, and inspect at the Participant's expense, any of the Equipment and to discuss its affairs, finances and accounts with its officers, all at such reasonable times and as often as may be reasonably requested, provided that Lessee acknowledges that such visits, inspections and discussions are solely for the protection of the Participants and agrees that they shall not waive or impair any of the provisions hereof or any of the rights, remedies or security of Participants hereunder nor constitute any implied warranty or representation as to any matters pertaining to the Equipment or otherwise;

(xviii) Each Item of Equipment when installed or attached to railroad cars as contemplated by Lessee, and at all times thereafter, shall be removable and shall for all purposes be personal property and not fixtures; and

(xix) Each Item of Equipment when so installed or affixed, although it may be deemed an "accession" to such railroad car as such term is defined in the Uniform Commercial Code, will not thereby become subject to any security interest with respect to such railroad cars.

(g) The Lessee and the Participants each severally represent and warrant that it is not entering into this Agreement or any other transaction or agreement contemplated hereby, directly or indirectly, in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, the Builder or any of the parties hereto is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA).

SECTION 7. *Liabilities of Participants.* No Participant shall have any obligation or duty to Lessee or to any other Participant with respect to the transactions contemplated hereby except those obligations or duties expressly set forth in this Agreement. Without limiting the generality of the foregoing, under no circumstances whatsoever shall any Participant be liable to Lessee, nor shall any Participant be liable to any other Participant, for any action or inaction on the part of the Trustee in connection with the Trust Agreement, the Lease, the Assignment, the ownership of the Equipment, the administration of the Trust Estate or otherwise, whether or not such action or inaction is caused by the wilful misconduct or gross negligence of the Trustee.

SECTION 8. *Lessee's Indemnities.* Lessee hereby confirms, for the benefit of the parties hereto and each subsequent holder of an Interim Equipment Trust Certificate or an Equipment Trust Certificate, the indemnities and undertakings of Lessee contained in Sections 6 and 10 of the Lease. The indemnities contained in said Sections shall survive the termination of this Agreement, the Trust Agreement, the Lease, the Purchase Order and the Assignment, and shall survive the transfer and payment of any or all Certificates.

SECTION 9. *Consent to Other Documents.* Each Loan Participant consents in all respects to the execution and delivery of the

Trust Agreement, the Assignment and the Lease; and hereby agrees to comply with all the terms of the Trust Agreement (as the same may hereafter be amended from time to time in accordance with the terms thereof), including, without limitation, (i) the terms of Section 6.03 (b) of the Trust Agreement relating to the reimbursement of the Trustor by the holders of the Certificates and (ii) the terms of Section 9.03 of the Trust Agreement relating to the sale of Certificates to the Trustor. The Trustor agrees to comply with all of the terms of the Trust Agreement (as the same may hereafter be amended from time to time in accordance with the terms thereof), and agrees, without limiting the generality of the foregoing, to comply duly and promptly with Section 8.01 of the Trust Agreement so that no lien shall arise pursuant to such Section in favor of the Trustee on the Trust Estate, and further agrees, if any such lien should arise, to take all such action and make all such payments required by it to be taken and made pursuant to Section 8.01 as may be necessary to remove such lien. Lessee hereby acknowledges that it has no objection to the execution and delivery of the Trust Agreement, or to the terms thereof, and acknowledges receipt of an executed counterpart thereof.

SECTION 10. *Miscellaneous.* This Agreement may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought; and no such termination, amendment, supplement, waiver or modification shall be effective unless a signed copy thereof shall have been delivered to the Trustee. The terms of this Agreement shall be binding upon, and inure to the benefit of, each party and its successors and assigns. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity and performance.

SECTION 11. *Representations and Warranties to Survive Delivery.* The liability of any of the parties hereto with respect to any

representation, warranty, indemnity, and covenant contained in this Agreement, the Lease or any certificate delivered pursuant hereto or thereto shall survive any investigation or inspection made by or on behalf of the Participants or the Trustee and the sale and delivery of the Equipment to the Trustee and shall continue in full force and effect until all of the obligations of the Lessee under the Lease shall be fully performed in accordance with the terms thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

ATTEST:

CONSOLIDATED RAIL
CORPORATION

By: _____

ATTEST:

HELEASCO TWO, INC.

By: _____

Donald W. Turner
President

PROVIDENT NATIONAL BANK

By: _____

Vice President

THE UNION NATIONAL BANK
OF PITTSBURGH

By: _____

Assistant Vice President

ATTEST:

THE FIDELITY BANK,
as Trustee

By: _____

Assistant Vice President